TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 988.

P. T. ROUSSE AND B. A. JESSE, PLAINTIFFS IN ERROR,

vs.

CLAVERPORT FOUNDRY AND MACHINE CO.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED SEPTEMBER 20, 1894.

(24,413)

(24,413)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 669.

F. T. ROUNDS AND S. A. JESSE, PLAINTIFFS IN ERROR,

vs.

CLOVERPORT FOUNDRY AND MACHINE COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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1–10 Said demurrer filed on the 13th day of May, 1912, is in words and figures as follows, to-wit:

Breckinridge Circuit Court.

CLOVERPORT FOUNDRY & MACHINE CO., Plaintiff,
vs.
F. T. ROUNDS and S. A. JESSE, Defendants.

Demurrer.

The defendants, F. T. Rounds and S. A. Jesse, demur to the jurisdiction of this court, and for grounds say:

1. The Court has no jurisdiction of the subject matter of the action.

2. It has no jurisdiction of the person of the defendants.

Wherefore, they pray the judgment of the court thereon and to be hence dismissed.

SWEENEY, ELLIS & SWEENEY,
Attorneys for Defendants.

On the reverse side of this Demurrer *is* found the following words and figures, to-wit:

#3832.

Breckinridge Circuit Court.

CLOVERPORT FOUNDRY & MACHINE CO., Plaintiff,
vs.
F. T. ROUNDS and S. A. JESSE, Defendants.

Demurrer.

1912, May 13, Filed in Open Court.
Attest:

LEE WALLS, *C. B. C. C.*

11–135 At a Circuit Court Continued and Held at the Court House in Hardinsburg, Ky., on Friday, the 17th Day of May, 1912.

Pres.: Hon. W. P. Sandidge, Special Judge in and for the Ninth Judicial District of Kentucky.

Thereupon on the 17th day of May, 1912, the following order was entered. Said Order is as follows, to-wit:

#3453.

CLOVERPORT FOUNDRY & MACHINE CO., Plaintiff,
vs.
F. T. ROUNDS and S. A. JESSE, Defendants.

This action having been submitted on Defendant's Special Demurrer to the Jurisdiction of this Court, and the Court being advised, overruled said Demurrer to which Defendant excepts, and Defendant is given 30 days to file answer and this action is Continued.

* * * * * * *

136 Thereupon on June 24th, 1912, the following Depositions for Plaintiff were filed in the Clerk's office. Said Depositions are as follows, to-wit:

Breckinridge Circuit Court.

CLOVERPORT FOUNDRY & MACHINE COMPANY, Plaintiff,
vs.
F. T. ROUNDS and S. A. JESSE, Defendants.

Depositions for Plaintiff.

The Deposition of Marion Weatherholt Taken at the Office of the Cloverport Foundry and Machine Company, in Cloverport, Kentucky, on the 13th Day of June, 1912, Pursuant to Agreement, to be Read as Evidence on Behalf of Plaintiff, in the Style of the Above Action.

Witness being first duly sworn, deposes as follows:

Examined by CLAUDE MERCER, Att'y for Pl'ff:

Q. State your name, age, residence and occupation.
A. Marion Weatherholt; 41; Cloverport, Kentucky; Real estate and insurance.
Q. What connection, if any, have you with the plaintiff, Cloverport Foundry and Machine Company?
A. Secretary and Treasurer.
Q. I will ask you to state whether or not the plaintiff in this action had any contract or agreement with the defendants, F. T. Rounds and Samuel Jesse, concerning any work to be done on a steamboat.
A. We did.
Q. State whether or not any agreement that you might have had with the defendants was reduced to writing.
A. Yes, sir.

137 Q. The defendants filed with their answer and counterclaim what purports to be a contract, which was signed by the Cloverport Foundry and Machine Company, which is found

on page 63 of the defendants' answer. Please read that contract and state whether or not that is the contract that was reduced to writing, of which you have testified.

A. Yes, sir.

Q. This contract was dated March 23, 1911. Please state what was done by the plaintiff under this contract dated March 23, 1911, if anything.

A. The old "R. D. Kendall" was sent to us, per agreement, by the defendant, and she was docked when the water was in condition that we could do it, which was sometime after it was brought here. It was docked on the ways.

Q. State whether or not the contract of March 23, 1911, was the only agreement or contract entered into between the plaintiff and the defendant with reference to work to be done on this steamboat.

Defendant objects because incompetent. (Obj. overr-.)

A. No, sir.

Q. If any other agreement was had, state what it was.

Defendant objects. (Obj. overruled.)

A. I cannot answer that question.

Q. Did you have any personal knowledge of any subsequent agreement that was made between the plaintiff and defendant?

Defendant objects. (Obj. overruled.)

A. Yes, sir.

Q. What agreement was made thereafter of which you have personal knowledge? State when it was and all about it in detail.

Defendant objects.

A. I am not prepared to answer that question as it was not made with me.

138 Q. I will ask you to state whether or not work, labor, or material was furnished and put on the steamboat, "R. D. Kendall", embodied in the written contract of March 23, 1911.

Defendant objects. (Obj. overruled.)

A. It was.

Q. State whether or not an account was kept by the plaintiff of work, labor and material, in re-constructing or rebuilding the steamboat, "R. D. Kendall".

Defendant objects. (Obj. overruled.)

A. Yes, sir.

Q. Who kept that account?

Defendant objects. (Obj. overruled.)

A. I kept it in part and J. W. Pate in part.

Q. Mr. Weatherholt, I hand you an itemized account which is filed with and made a part of your petition, or the petition of the plaintiff. I will ask you to examine this account item by item and to state whether or not the labor and materials and the dates of the

furnishing of the labor and materials and the prices charged thereof are correctly set forth in said itemized account, and also whether or not those charges were reasonable, and charges that were agreed to have been paid by the defendants for the work done.

A. I have examined each and every item in the account handed me, and with reference to the amounts charged, are reasonable, the dates correct as of original entries.

Q. Were the items of said account, each and all of them, furnished by the plaintiff under agreement with the defendants concerning the re-constructing or re-building the steamboat, "R. D. Kendall".

Defendant objects.

139 A. Yes, sir, and more.

Q. What do you mean by more?

A. I mean that there was more material and labor furnished than was necessary for completing the original contract on the "R. D. Kendall".

Q. State whether or not the plaintiff after the date of this contract re-built the boat then known as the "R. D. Kendall", and whether or not she was re-christened "Golden Girl".

A. They did.

Q. Was each and every item contained in said account furnished by the plaintiff in re-building or re-constructing the "R. D. Kendall" and converting it into the steamboat now known as the "Golden Girl"?

A. Yes, sir.

Q. Mr. Weatherholt, state as nearly as you can the actual profit that the plaintiff realized in the work done for the defendants on said steamboat, as shown by the itemized account.

Defendant objects.

A. To the best of my knowledge, it would not exceed 10% over cost price.

Q. State whether or not each and every item which is embraced in said account is charged at the original cost price plus a profit as you say will not exceed on the average 10%.

A. Yes, sir.

Q. Mr. Weatherholt, did you ever have any talk with either of the defendants as to that subsequent work that was done on this boat, not embodied on the first contract?

A. Yes, sir, after we had started on it but I did not have the original talk about constructing the new boat.

Q. What talk, if any, have you had with Mr. Rounds, or Mr. Jesse, or both of them?

A. I made a trip to Owensboro sometime in October, I went down with the idea of getting another advance on the job of work and submitted at the time an itemized statement of the work and materials furnished on the job up to that time. But, at the time I was there, Mr. Rounds spoke to me and stated that the job was costing them entirely too much money, or something to that effect, and I

did not get the advance that I went for. I told him that I didn't know just exacly at that time what would be the whole cost or just when it would be completed. But, as to knowing anything about subsequent agreements after the original contract, I made none of them.

Q. About what time was it that you made the trip to Owensboro?

140 A. Sometime in October, 1911.

Q. Did Rounds or Jesse pay to the plaintiff any money on the contract?

A. Paid $500.00.

Q. I hand you the answer filed by the defendant and filed as a part of that answer a copy of a check dated, "Owensboro, Ky., October 2nd, 1911. Owensboro Banking Co. Pay to the order of Cloverport Foundry & Machine Co., $500.00 for on Contract of re-constructing the R. D. Kendall, March 23, 1911. Mrs. F. T. Rounds."

Examine that check and state whether or not a check written as that is written was ever delivered to the plaintiff.

A. No, sir.

Q. I hand you what purports to be the original check. I will ask you to examine that check and state whether or not you accepted that check as drawn.

A. No, sir, not as drawn.

Q. In what particular, if any, does it fail to correspond with the check that you did accept?

A. There is more on it than was when it came to me first.

Q. What was on it when it came to you first?

"OWENSBORO, KY., October 2nd, 1911. No. 21.

Owensboro Banking Co.

Pay to the Order of Cloverport Foundry & Machine Works Co., $500.00 for On Contract.

MRS. F. T. ROUNDS."

Q. Were the words "Of re-constructing R. D. Kendall, March 23, 1911," on that check at the time you accepted it and received the money thereon?

A. No, sir.

Q. This is the original check? isn't it?

A. Yes, sir.

Q. It is your indorsement on it, isn't it?

A. Yes, sir.

Q. I will ask you to file this check as part of your reposition, marked #1.

A. I will.

Q. The itemized account made part of your petition totals $5,668.65. State whether or not that amount is actually due the plaintiff from the defendants, for work done on said steam-

141 boat.

Defendant excepts.

A. Yes, sir.

Q. Is this account subject to any off-sets or discounts that is not stated therein?

Defendant objects.

A. No, sir.

Q. The original contract of March 23, 1911, specifies certain work to have been done and further specifies that said work was to be done for $1,690.66, with a guarantee that if work that may have to be done that you couldn't contemplate at that time should not cost to exceed $200.00, I will ask you to state whether or not any other work was ever done on said steamboat other than is specified in this contract.

Defendant objects. (Obj. overruled.)

A. The "R. D. Kendall" was built into a new boat and re-christened the "Golden Girl", and there was quite a great deal of other work done and materials furnished.

Q. State whether or not the account filed with the petition correctly sets forth the nature and character and dates or other work that was done on said steamboat other than contemplated by that contract.

Defendant objects. (Obj. overruled.)

A. As a whole, yes, sir.

Q. State whether or not the work contemplated by the contract of March 23, 1911, was done by the plaintiff for the defendant.

Defendant objects. (Obj. overruled.)

A. Yes, sir.

Q. State whether or not the amount as set forth in the original contract of not to exceed $1,800.00 in any event would have been just compensation for the work then contemplated at the time said contract was drawn or entered into.

Defendant objects.

A. It would.

Q. State whether or not the materials that were furnished, as shown in the itemized statement, were first class, and in conformity with the agreement as you understood it to be — other sources with reference to building said steamboat.

Defendant objects. (Obj. overruled.)

A. Yes, sir, and some of it better than contract called for.

Q. State, Mr. Weatherhold, what active connection you
142 have with the Cloverport Foundry and Machine Company.

A. Secretary and Treasurer.

Q. As Secretary and Treasurer, what are your duties?

A. I do the principal part of the buying and the book-keeping.

Q. Do you keep an account of the affairs of said Company?

A. Yes, sir.

Q. Did you keep the account, an itemized statement of which is filed as part of this petition, of the work, labor and materials and dates thereof as furnished to the defendants in reconstructing said steamboat?

A. I did.

Q. Did you ever see Mr. Rounds or talk with him on any other occasion than in the one testified to at the time he gave the check filed with your deposition?

Defendant objects.

A. The check was mailed to us.

Q. Have you seen Mr. Rounds or Mr. Jesse, or either of them, at Cloverport, and had any talk with either of them in any way concerning this boat?

Defendant objects.

A. Only in general way.

Q. What was said?

A. I had very little to do with the contracting—that is the subsequent contracts after the original was made to repair the "R. D. Kendall" and said very little to them about the costs at the time of completion or other materials pertaining to the "Golden Girl."

Q. Who was in active charge of the work on behalf of the plaintiff?

A. J. W. Pate.

Q. Was this boat re-constructed and re-built in a first class manner or according to the agreement as you understood it to be?

A. It was.

Q. At the time the boat was surrendered into the possession of the defendants, under order of this Court, what condition was the boat in?

A. First class.

Q. Had the boat been inspected by any Government Inspectors?

A. It had.

143 Q. Do you know the inspections as made by any Inspector? whether is passes or not?

Defendant objects.

A. I couldn't answer that question. I didn't go with the Inspectors when they inspected it. I only have knowledge that they were here and inspected the boat.

Q. State whether or not the time the boat was surrendered to the defendants, after they executed bond, in this case, any offer was made by the plaintiff to give the boat a thorough trial before turning it over into the possession of the defendants.

A. Yes, sir.

Q. Was that offer accepted?

A. No, sir.

Q. Why?

A. The defendant's representative stated that they would accept the boat the way it was.

Q. Without any trial? Didn't demand any trial?

Defendant objects.

A. No, sir. That proposition was made in my presence.

Q. Do you remember the name of the representative on this occasion?

A. Mr. Laswell.

Q. State whether or not the defendants demanded the possession of the boat before the suit was instituted.

A. They did.

Q. Who came here and made any demand for the boat?

A. Same Mr. Laswell was here and made a tender of the original contract price.

Q. Mr. Rounds ever come here to look after the boat?

A. Yes, sir, him and an engineer at one time to take the boat.

Q. Why did they not take the boat?

A. Because they hadn't paid for it.

Cross-examined by Capt. W. E. ELLIS, Att'y for Def't:

Q. You are one of the stockholders and officers of the plaintiff, Cloverport Foundry and Machine Company, are you not?

A. Yes, sir.

Q. Did you have anything personally to do with the making of the original contract which is set out in the writing which is filed in this case?

A. Not personally. I did in an official manner. That is
144 as an officer of the Foundry Company.

Q. As an officer of the Foundry Company, you examined the written contract and approved it?

A. Yes, sir.

Q. Did your Company make up blue prints, as they are called, and submit them to Rounds and Jesse before the contract was made?

A. Yes, sir.

Q. These blue prints, about which I asked you, are filed as an exhibit with the answer of the defendants. I ask you to examine those blue prints and state whether or not they show the work and all the work which the plaintiff contracted to do in the re-construction and re-building of this steamboat, "R. D. Kendall."

A. Why, no, they couldn't do that. They merely show or give an idea of how the boat would look after it was re-constructed but these are not specifications and working plans. They merely show how this boat would look after being re-modeled and re-constructed.

Q. Is it not a fact that the blue prints which you have before you and from which you are now testifying specify in detail the work which the plaintiff contracted to do to "R. D. Kendall" which was re-christened the "Golden Girl."

A. No, sir, it doesn't. This practically shows the boat as it would be repaired. There was quite a good deal of old work on that old

boat that was to have been left there under the original contract and this merely shows how the boat looks as it would be re-constructed.

Q. The blue prints, if I understand your statement, show how this boat would look when it was re-constructed according to the terms of the old written contract between the plaintiff and the defendants?

A. Yes, sir.

Q. Does the boat, as delivered to the defendants, correspond to the blue prints?

A. No, sir.

Q. In what respect does that boat differ from the blue prints?

A. That I couldn't answer because I am not mechanic enough to answer it. I could state that one would be the "R. D. Kendall" repaired and the other would be the "Golden Girl."

Q. The boat which is now called the "Golden Girl" is the boat which the plaintiff contracted, with the defendants to re-construct, re-model and re-build, isn't it.

A. A very little of it, except the machinery.

Q. The plaintiff examined the "R. D. Kendall" before it entered into the written contract relied on by the defendants, didn't it?

A. Yes, sir.

145 Q. After it had examined the boat and considered what was necessary to be done in its re-modeling, re-construction and repairs, it entered into the written contract which we have here, didn't it?

A. Yes, sir.

Q. You say that you had some talk with Mr. Rounds after the original contract was made, I will thank you to state specifically what happened or was said in that conversation which you had with Mr. Rounds.

A. I couldn't state specifically what I did say or what Mr. Rounds did say. It is an impossibility for a man to remember all those things. I can qualify that answer by stating that Mr. Rounds asked me to make up an itemized statement of the account and submit it to him and he said that they thought it was entirely too high—costing too much.

Q. You have spoken of the $500.00 check, dated Oct. 2, 1911, who delivered that check?

A. U. S. Mail.

Q. Are you a bank officer?

A. No, sir.

Q. Have you any connection with the bank?

A. None at all.

Q. You say some words have been added to this check since it was indorsed and collected by the plaintiff?

A. Yes, sir.

Q. I will ask you to read to the Stenographer the particular words which you think have been added to this check since it was received and collected by the plaintiff:

A. "Of re-constructing the R. D. Kendall March 23, 1911."

Q. The words "On contract" were in the original check, you think?

A. Yes, sir.

Q. And you say that the words "Of re-constructing the R. D. Kendall March 23, 1911" were added after that check was collected by the plaintiff?

A. After it went through my hands. I want to answer that question a little more fully by stating that I was very particular to not accept a check "On contract of March 23, 1911." My bookkeeper noted the check and I called Mr. Pate over the phone and told him that I had received check as stated, marked, "On contract."

Q. You are a business man and accustomed to inspecting and examining hand-writings, are you not?

146 A. I am not an expert on hand-writings, no, sir.

Q. You are a business man?

A. Yes, sir, I have been in business here for 15 years.

Q. You have had much experience in looking at hand-writings, have you not?

A. Yes, sir.

Q. I show this check again and ask you if the phrase "Of re-constructing the R. D. Kendall March 23, 1911", is not written in the same hand-writing and absolutely with the same ink as the balance of that check?

A. Well, if there is any difference in the ink or the handwriting or the time it was put there, I am not expert enough to detect it.

Q. Can you give any itemized statement of the work that was done in the re-construction of the "R. D. Kendall" in addition to the work called for in the specification which you have before you, and which is filed with the defendants' answer?

A. That is a question I don't know how to answer. It is misleading. It is ambiguous. I can only say that the work that was necessary to have been done in the re-construction of the "R. D. Kendall"—practically all of that was done, and a great deal more, in building the "Golden Girl." That is as near as I can answer that question.

Q. In re-constructing, re-modeling, and re-building the "R. D. Kendall" you did not do any work that was not necessary to fit it for navigation and render it sea-worthy, did you?

A. We never completed the re-construction and re-fitting of the "R. D. Kendall." I will continue to answer by stating that after the old "R. D. Kendall" was docked and the carpenters had taken out such pieces in the hull as was necessary by being re-placed with new timbers to put it in condition to pass U. S. Government inspection, and about that time, or shortly afterwards, the inspectors came and saw what we had done and marked such other pieces as was necessary to take out and be re-placed to put the hull in a sea-worthy condition to pass inspection. They also stated that in case only the repairs was done necessary to put it in condition to pass inspection it would be only some two or three years before it would have to be gone over again and that the defendants ought to build a new hull outright and name the boat another name. Then, this second or subsequent con-

tract or agreemnt was made between other members of the plaintiff's firm and the defendants.

The defendants object to the latter clause of this answer because not competent. (Sustained as to last Clause stating subsequent contract made.)

Q. You personally have no knowledge of any second or subsequent Contracts, have you?

147 A. No, sir.

Q. The plaintiff in its contract dated March 23, 1911, expressly agrees that it will re-model and re-build and convert the "R. D. Kendall" into an excursion steamer, and to all intents and purposes the work shall be done from the deck up, including the docking of the boat, re-corking, one new stack and changing the old stack to conform with the new one, turning the boiler around, taking out engines, putting in the Parker engines, etc. and that the same shall be put in a first class condition, raising the bow, and any other work than turning around and re-fitting the boiler, which may show up, etc., and that it will do all of this work for $1,690.66. Plaintiff in its written contract of March 23, 1911, further contracts that it will put in all extra work to be done so as to complete the job and put it in running condition and acceptable to the U. S. Steamboat inspectors, not to cost over $200.00. Said extra work and material used is agreed to furnish at the actual cost plus 10% but the contract is that the extra work should not exceed $200.00, and that the lumber and timbers used in the re-building of the boat should be of grade 1, first class, and workmanship guaranteed. I ask you if you did anything more to this boat than was necessary to put it in first class condition.

A. What boat are you talking about?

Q. "R. D. Kendall 1", the one you re-modeled.

A. We didn't re-build the "R. D. Kendall"; We built the "Golden Girl."

Q. But the work that you did, as far as you have any personal knowledge, was done under the contract of March 23, 1911, which is filed and made part of the defendant's answer? Is that not true?

A. The subsequent contracts or agreements were not made with me, and I know nothing about them except from hear-say.

Q. You didn't furnish any of the machinery in the "Golden Girl," did you?

A. Some parts of it.

Q. What parts.

A. I don't know; Other members of the firm do but I do not.

Signature waived.

In order to expedite the taking of the testimony, it is agreed that the itemized account filed with the petition is correct in dates and

148 articles furnished by the plaintiff to the defendants in re-building the boat in controversy, and that the witness would testify that the amounts charged therein for each and every item is first cost plus a reasonable profit. But the defendants object

to the testimony on the ground that it is an effort to vary the terms of the written contract and because the testimony if delivered item by item by the witness would be incompetent and irrelevant.

Also the deposition of J. W. PATE taken at the same time, place, and for the same purpose as set forth in the caption.

Witness being first duly sworn, deposes as follows:

Examined by CLAUDE MERCER, Att'y for Pl'ff:

Q. State your name, age, residence and occupation.

A. J. W. Pate; 42; Cloverport, Breckinridge County, Ky.; Manager of Cloverport Foundry & Machine Company.

Q. How long have you been in the employ of the Cloverport Foundary & Machine Company, the plaintiff?

A. 7 years, perhaps.

Q. Mr. Pate, please state whether or not you were connected with the plaintiff when any contracts were entered into with Rounds and Jesse, the defendants in this action, concerning any work to be done on a steamboat.

A. I was.

Q. I hand you a contract, Mr. Pate, dated March 23, 1911, which is in the form of a letter addressed to Rounds and Jesse. State whether or not this contract was entered into by the plaintiff and the defendants.

A. It was.

Q. When was the boat, "R. D. Kendall," received at Cloverport?

A. About the 1st day of April, 1911.

Q. State whether or not the plaintiff did any work on said steamboat under the contract of March 23, 1911.

A. We did.

Q. How much work was done by you under that contract?

Defendant objects because incompetent. (Obj. overruled.)

149 A. Docking the boat; dismantling; taking off boards and timbers.

Q. State whether or not this contract of March 23, 1911, was ever annul-ed by the defendants.

Defendant objects because incompetent. (Obj. overruled.)

A. I will have to ask you a question before I can answer your question. The question is whether there was another contract entered into.

Q. I ask you to state whether or not this contract of March 23, 1911, was ever done away with.

Defendant objects. (Obj. overruled.)

A. It was.

Q. When? and by whom?

A. Mr. Frank Rounds and myself; about the last part of May, 1911.

Q. Did you make another contract?

Defendant objects. (Obj. overruled.)

A. We did.
Q. What was that contract or agreement you made in May, 1911?

Defendant objects.

A. After we had gotten into the work of dismantling, tearing down the old Kendall, we found that the boat was not what it appeared to be when first contract was made; that it would be necessary to re-build the boat from the bottom up to make a good job of it. We telephoned Mr. Rounds and he came up and going over the job he agreed with myself and the carpenters that we would have to build practically a new hull or that it would be better to build a new hull. Then, he asked me what this new job would cost and I told him that at that time I was unable to say but it looked like about $3,500.00. He made no objection and I further stated that the best way I knew to handle the job would be to keep an accurate account of the labor and material and then add a reasonable per cent for our trouble. He agreed with me and asked me to rush the job as fast as we could and left and that was all that was said at that time.

Q. Was anything said about your doing the work that was embodied in the old contract?

A. Not a word.
Q. Did you do the work that was embodied in the old contract?

Defendant objects. (Obj. sustained.)

A. And much more.

Q. At what time was it understood or agreed that the
150 plaintiff would receive pay for the work done on the steamboat under the contract that you have testified to?

A. When finished.

Defendant objects. (Obj. overruled.)

Q. Was any time specified in which to finish the boat?

Defendant objects. (Obj. overruled.)

A. A mere estimate as to the time.
Q. What estimate was that?

Defendant objects. (Obj. overruled.)

A. The best I can remember is that it was from the last of August until the first of September.

Q. Now, Mr. Pate, state what additional work this second contract contemplated in addition to what was in the first contract.

Defendant objects. (Obj. overruled.)

A. In the first contract we were to re-lay part of the deck—that is, take out all the bad planking and put in new, take out bad planks in hull and make the hull in a sea-worthy condition.

Q. The contract of March 23, 1911, clearly sets forth what you were to have done under that old contract, does it not?

Defendant objects.

A. It does.

Q. In addition to the work, contracted for March 23, 1911, what did you agree to do at the time that you spoke of seeing Mr. Rounds the latter part of May?

Defendant objects. (Obj. overruled.)

A. Well, the difference is that it was changed from a patch job to a new job.

Q. Did your company do the work as agreed to by Mr. Rounds in May, 1911?

Defendant objects. (Obj. overruled.)

A. We did.

Q. State whether or not you had any further agreement with Mr. Rounds concerning this steamboat.

Defendant objects. (Obj. overruled.)

A. We did.

Q. When was that?

Defendant objects. (Obj. overruled.)

151 A. At a number of times. The principal was over the phone when we agreed to build a new cabin instead of repairing the old one.

Q. When was that agreement as to the new cabin made? About when?

Defendant objects. (Obj. overruled.)

A. Last week of August, 1911.

Q. What did you agree to do in addition to what you had theretofore agreed August, 1911?

Defendant objects. (Obj. overruled.)

A. Tear all of the old cabin off and build it new from the hull up.

Q. What, if anything, was said about your compensation for tearing the cabin off?

Defendant objects. (Obj. overruled.)

A. Not a thing. It was understood that we were working under the same contract we had when we re-built the hull.

Q. Was anything said about when the boat was to be delivered, after the last contract?

Defendant objects.

A. At the earliest possible time. As to any specified time, we had none at *at* all after the first contract.

Q. I believe you were the foreman in charge of this work on this boat, were you not?

A. I was.

Q. State whether or not you had active charge of all this work concerning the re-construction of the boat in controversy?

A. I was general superintendent while I had others on the job.

Q. Did you keep an account of the time and the labor and the materials furnished in the construction of this boat?

Defendants objects.

A. I kept the time and the hardware; other materials were kept by Mr. Weatherholt.

Q. I will ask you to state whether or not you have examined the itemized account filed with the petition.

A. I have.

Q. Have you examined it item by item?

A. Several times.

Q. Are you familiar with each item and the amount that
152 is charged therefor, as shown by the account?

A. I am.

Q. State whether or not said account correctly represents the dates and the work and material furnished and the original cost thereof plus a reasonable profit, in the construction of the steamboat.

Defendant objects. (Obj. overruled.)

A. It does as to the time and hardware.

Q. Were each and all of the items mentioned therein, concerning which you testify, actually furnished to and used in the reconstruction of the steamboat in controversy?

A. They were.

Q. State whether or not the said steamboat was constructed in accordance with agreements of which you have testified.

Defendant objects. (Obj. overruled.)

A. To the best of my ability and knowledge, they were; the best I knew how to do it according to the way I understood the contract.

Q. Was the re-construction of the boat in accordance with all of the provisions of the contract?

A. It was.

Q. At the time that you pronounced this boat complete, under the contract, state whether or not it was in a sea-worthy condition and came up to the requirements of the contract.

A. It did.

Q. In every particular?

A. It did with the exception of a few items.

Q. State whether or not you placed those other items recommended by the inspectors on the boat.

A. We did, at once.

Q. State whether or not the inspector, or any U. S. Government Inspector examined the said boat.

A. They did.

Q. How often?

A. Twice.

Q. When was the date of the first examination?

A. Shortly after we docked the "R. D. Kendall" and then when the boat was finished.

153 Q. State whether or not it passed the inspection of those inspectors.

A. It did, as to the work done. They failed to issue inspecting certificate on account of life boats, and life preservers and things of that kind not being on boat which wasn't our contract to place.

Q. The hull and the boiler passed inspection?

A. They did.

Q. I hand you some blue prints that are filed with the answer of the defendants. I wish you would state whether or not you furnished those blue prints to the defendants.

A. I did.

Q. What do those blue prints represent?

Defendant objects. (Obj. overruled.)

A. A mere sketch of what the boat would look like when finished together with the new and old work.

Q. Were those blue prints furnished under the old contract?

A. They were.

Q. State whether or not those blue prints disclose how the boat looked after it was entirely re-constructed.

A. As near as we could carry it out; it varies in numbers of places though.

Q. About when did you furnish these blue prints to the defendants?

Defendant objects because it is not in issue when they were furnished.

A. About the last of May, 1911.

Q. Before or after the second contract of which you speak?

A. Before.

Q. The extent and character of the repairs, as set forth in the contract of March 23, 1911, the contract price thereof, $1,690.66 with the guarantee that those repairs shall be done with any extra work required, not to exceed $200.00 more. State whether or not that was a fair compensation embodied in the written contract.

Defendant objects. (Obj. sustained.)

A. I consider it a good contract for the Fuondary Company.

Q. Now, Mr. Pate, in your own language, state the difference in the boat re-christened as the "Golden Girl" and the boat as contemplated to have been repaired under the contract of March 23, 1911.

Defendant objects. (Obj. overruled.)

154 A. The March contract would have given them a patch boat, merely doing such work that was necessary to make sea-worthy while under the new contract we gave them practically a new boat out and out except machinery, quite a good deal of that being new.

Q. Good deal of what?

A. Machinery: All piping except main steam-pipes were made new; all valves new; all siphons; both smoke stacks were built new; boiler front new; furnace new; all of which would not have been necessary to have done on the first contract but become necessary to make that line of work in touch with the new job.

Q. 10% was the specified profit in the old contract; What was the understanding as to the compensation or profit to be paid to the plaintiff under the new agreement?

Defendant objects. (Obj. overruled.)

A. A reasonable per cent—What I took to be 10%—as to what Mr. Rounds took it, I couldn't say.

Q. You represented the plaintiff in these matters, did you not?

A. Yes, sir.

Q. The agreements were made by you for and on behalf of the plaintiff?

A. They were.

Q. State whether or not you had authority to make these agreements.

A. I did and with anyone else.

Q. This old contract contemplates and specifies that the boat should be delivered the 10th day of June, 1911. State whether or not it would have been possible for the boat to have been re-constructed and re-built as the plaintiff re-constructed and re-built it within that length of time.

A. We could provided we had gotten to work at it when the boat was delivered to us. We were delayed about 30 days on account of high water being over our ways.

Q. State whether or not Mr. Rounds or Mr. Jesse ever made any statements to you as to any contracts they say they had with various parties contemplating the use of this boat last summer by way of excursions?

A. I think they did in talking while there was no special stress put on those dates at all. They spoke of getting the boat for certain things—such as the Fair and other things—but there was no special orders to get it out by any certain time.

Q. Was that before or after the second and third agreement that you have testified to?

155 A. At different times—before and after too.

Q. State whether or not your Company would have contracted to have re-built this boat in the manner that you say it was re-built to have been delivered before December, 1911.

A. I think not. While we could have built it in some less time if we had known we were going to re-build the boat from the start.

Q. What character of materials and workmanship was furnished by the plaintiff in re-building and re-constructing this boat?

A. Material was first class.

Q. The workmanship?

A. As good as could be had in this territory. Most of the men being as good as could be had anywhere.

Q. State whether or not there was any shotty work done in complying with the contract in re-building this boat.

A. Not any in my knowledge.

Q. State whether or not this boat was completed, ready for delivery, as soon as it was practicable for the plaintiff to complete it under the contract, barring all unavoidable delays.

Defendant objects.

A. We rushed the work as fast as we could.

Q. Did the defendants refuse to pay for the work done on this boat?

A. They did.

Q. Were they notified that the boat was ready for delivery?

A. They were.

Q. When?

A. About the 1st day of December, 1911.

Q. What kind of condition was it in at the time you notified them that it was ready for delivery?

A. In good condition as to our work.

Q. What other work was necessary before the boat could have been used by them?

A. It needed the life preservers to meet the Government requirement.

Q. Mr. Pate, did you see a check that was sent here for $500.00?

A. I did not. It was only read to me over the telephone.

156 Cross-examined by Capt. W. T. ELLIS:

Q. Are you a stockholder in the Cloverport Foundary and Machine Company?

A. I am.

Q. And its secretary and Treasurer?

A. No, sir, I am General Manager.

Q. Were you such stockholder all the time after the 23d of March, 1911?

A. I was.

Q. Did you participate in the making of the written contract of March 23, 1911?

A. I, together with Mr. Weatherholt, went and looked over the "R. D. Kendall" laying at Owensboro, and had such work as was needed pointed out to us by Mr. Rounds.

Q. Did you draw these plans or blue prints which are filed here?

A. Yes, sir, dictated them. I am not a draftsman myself but I was present when everything was done.

Q. And approved the blue prints as they were made out?

A. Yes, sir, and signed them.

Q. You sent those blue prints to the defendants before you closed the contract, I believe?

A. No, sir.

Q. Didn't you send them these blue prints before the written contract between the plaintiff and the defendants was signed?

A. The blue prints were sent several days after the contract was made up. The blue prints were merely to show how the boat would look together with the old and new as it would be built. As to the blue prints, there was very little to them. No man could have taken the blue prints and built a boat from them at all.

Q. But you state in your written contract with the defendants, do

you not, that you are sending them the blue prints and that they cover the work to be done from the deck up?

A. Whatever the letter states there. I don't remember what is in the letter.

Q. It is signed by "Cloverport Foundary and Machine Company, by Marion Weatherholt."

A. That is the Secretary of the Foundary Company.

Q. You saw the letter when the blue prints were sent?

157 A. That letter was possibly read to me before it was sent but that letter went out ahead of the blue prints.

Q. Those blue prints are nothing more than just a mere sketch of the job. You see the blue prints were sent after the letter and contract was made and written. We never made the blue prints until after the contract had been accepted.

Q. I will ask you if you didn't on March 23, 1911, in your letter to the defendants, say this: "On yesterday, we mailed you blue prints, giving specifications in detail for the re-modeling and re-building, and re-constructing the R. D. Kendall, into an excursion steamer along the lines suggested and agreed upon between you."

A. I suppose we did but there are letters agreeing to this contract previous to this letter. I know that there was a letter covering this contract previous to that.

Q. Where is that letter?

A. I don't know anything about it. There was an agreement as to the price and the work to be done before I ever made the blue prints. I worked on them a week after we had the contract. I never hit a lick towards making these until after we knew what they were going to do in the matter.

Q. Can you show any written agreement between the plaintiff and the defendants prior to the 23d day of March, 1911?

A. I don't know whether I will be able to produce those letters or not. This is the contract and we had a letter of agreement before the contract was drawn up.

Q. The writing dated March 23, 1911, was the original contract between the plaintiff and the defendants.

A. There was an agreement or telephone agreement. There was a telephone agreemnt as to those prices.

Q. This writing of March 23, 1911, represents accurately the contract between the plaintiff and the defendants, doesn't it?

A. It does.

Q. What was your object and purpose in furnishing the blue prints to the defendants?

A. Merely to give them an idea how the job would look, as heretofore stated.

Q. Don't you say in your letter or written proposition of March 23, 1911: "On yesterday we mailed you blue prints, giving specifications in detail for the re-modeling and re-building the R. D. Kendall into an excursion steamer along the line as suggested and agreed upon between us."

A. That is what we say in that letter but his blue print is not a detailed blue print.

Q. But you say in your letter of March 23, 1911, which has been shown to have been the contract that the blue prints give the
158 detailed specifications for the re-modeling and re-building and converting the "R. D. Kendall" into an excursion steamer.

A. Well, it is possible for some persons to call them that while they are detailed specifications and not ever working plans.

Q. You submitted them to the defendants as detailed specifications, did you not?

A. As an idea as to what the job would look like. We never was requested to give them any kind of sketch at all; We did it voluntarily.

Q. But you gave the blue prints for the purposes stated in your letter, did you not?

A. We gave them for the purpose as I have stated. As to giving them an idea as to the way the boat would look when finished.

Q. I show you a letter dated March 11, 1911, signed by the Cloverport Foundary and Machine Company, by Marion Weatherholt, and I ask you to look at that letter and say if it is the original letter, that the plaintiff wrote to the defendants.

A. That letter is correct.

Q. Will you file this letter and write your name along the margin of it and make it a part of your deposition, marked "#2"?

A. I will.

Q. I notice in your letter of March 11, 1911, you say you "will be down Monday morning on the 7 o'clock train, with our draftsman to make drawings in order to get up the blue prints and specifications of work to be done on the R. D. Kendall."

A. We did.

Q. Did you go down with your draftsman?

A. We did.

Q. He got up the specifications and blue prints after that?

A. After going there and in conversation with Mr. Rounds, he pointing out to us what work there was to be done, we seen it unnecessary to make a detailed blue print so we merely made sketch of the job, as hereinbefore stated.

Q. You made the kind of a sketch that you designated in your letter of March 23, 1911, did you not?

A. Yes, sir, nothing being given in detail.

159 Q. I show you a letter dated "Cloverport, Ky., March 28, 1911," addressed to F. T. Rounds, signed by "Cloverport Foundary and Machine Company, by Marion Weatherholt" in which is stated: "We have your letter of the 27th which we have carefully noted, and the changes you wish made from our specifications, we will follow as nearly as is possible to do. As soon as we get the boat * * * and * * * out we will write or telephone you at once. This will be about the first of next week. Storm yesterday did us only slight damage. Thanking you very kindly for past favors, we are, Very truly yours, Cloverport Foundary and Machine Company, By Marion Weatherholt." I show you this letter and ask you if the plaintiff wrote it to the defendant, Rounds.

A. I can't say about those letters because of not seeing them. Mr. Weatherholt will have to testify to that.

Q. You know Mr. Weatherholt's hand-writing? Have seen him write often. Have you not?

A. I have. I never saw this letter, nor the other—so far as that is concerned.

Q. Is that his general signature?

A. It looks to be.

Q. Will you file that letter and make it a part of your deposition, and mark it "#3"?

A. I would rather have him file this.

Q. I am not asking you to sign anything; I am asking you whether you are willing to file this letter which I have read to you and make it a part of your deposition.

A. It looks to be Weatherholt's hand-writing. I don't see why it would be wrong for him to file it.

Q. Will you file this letter and let it be made a part of your deposition?

A. I would rather he would file it.

Q. Do you decline to file it and let it be made part of your deposition?

A. I do.

Q. I show you a letter dated: "Cloverport, Kentucky, March 9, 1911", purporting to have been written by the Cloverport Foundary and Machine Company to the defendants, Jesse and Rounds. Among the many things stated in that letter, I see the following paragraph which I wrote from the letter: "Of course, you understand that if we were bidding on the work and making you a set price on the job for which we would guarantee to do the work, we would be obliged to have the drawings and specifications in detail above referred to and even with these in making you a stipulated figure we would make it high enough in order to make us safe in the clear. You can see unfor-seen things as well as we and on all this class of work it is more or less guessing." Did the plaintiff write that letter to the defendants?

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A. I have no doubt that Weatherholt wrote that letter.

Q. Will you file that letter and make it a part of your deposition?

A. I refuse this *as* same as the other while I think Mr. Weatherholt would file them al-right.

Q. I will ask you to examine the signature of Marion Weatherholt, written in ink, and see whether or not this is his signature.

A. I doubt it; I think it might have been written by the bookkeeper or stenographer.

Q. How many contracts did the plaintiff have with the defendants about re-modeling, re-constructing and re-building the "R. D. Kendall"?

A. One written contract, one verbal contract, and then orders to do different things from time to time.

Q. You didn't have two verbal contracts, then?

A. You could call them contracts. We had orders to do things and we did them.

Q. I understood you to say on your direct examination that you had two verbal contracts.

A. We had contract to re-build the hull and contract to re-build the cabin. We had orders to do things that are not written in the contract.

Q. When was it that you claim to have made the first verbal contract with the defendants?

A. The latter part of May; Sometime in May.

Q. Where was it made?

A. Down on the River, by the side of the wreck of the old "R. D. Kendall" *and* our way in this town.

Q. Who was present?

A. A number of our men but no one taken part except Mr. Rounds and myself.

Q. You and Rounds were, then, the only persons concerned in that verbal contract?

A. The men, of course, were not concerned; they were hired men. I was the only member of the firm present.

Q. The only member of the corporation?

A. Yes, sir.

161 Q. And you are the only man that knows about that deal?

A. I am the only man that knew about that.

Q. When and where was the last agreement made, if you know?

A. Over the Cumberland telephone.

Q. With whom was that?

A. Supposed to be Mr. Frank Rounds, he answered the phone after a conversation he had had with Mr. Jesse after tearing down the old cabin. He stated that he was going home from here to see Mr. Jesse and ask him to have the old cabin all torn away and built new. He promised to let me know by letter what to do about the matter. After waiting several days and getting up to the commencement of the cabin work, I went to the telephone and called for Mr. Rounds and asked him what to do about it. He said, "Tear off the old cabin and build it all new."

Q. Who did the talking?

A. I did the talking at this end of the line and somebody answered — to be Mr. Rounds at the other end of the line. I asked if it was Frank Rounds and he said it was.

Q. But you didn't know.

A. Certainly not no more than anybody else could know a voice over the phone. It sounded like his voice.

Q. What was the date of that conversation?

A. About the 1st of September, 1911.

Q. Have you got your time book?

A. I have.

Q. Did you ever submit that to the defendants, or either of them?

A. Have not; Never been requested of me.

Q. Did the old boat, the "R. D. Kendall," have a cabin deck on it when you got it for repairs?

A. It did not.

Redirect examination by CLAUDE MERCER, Att'y for Pl'f:

Q. Now, Mr. Pate, I forgot to ask you a question or two in your first examination. I hand you a photograph and ask you to examine that photograph and state what that is a photograph of.

A. The old steamboat, "R. D. Kendall."

Q. Taken when?

A. After it had been dismantled and torn down according to Capt. Abram's request.

Q. Was that before or after the second agreement of which

162 you have spoken?

A. Before.

Q. Is that a true and correct photograph as she appeared at that time?

A. It is.

Q. Where was that photograph taken?

A. On our ways in the city of Cloverport.

Q. And this was after you had dismantled the boat under the first contract.

A. It is.

Q. Will you file that as a part of your deposition, marked "#3"?

A. I will.

Q. About when was this photograph taken, if you know?

A. Sometime in May, 1911.

Q. Did Mr. Rounds see the boat after it was dismantled?

A. Saw it in that condition about the time that photograph was made. That about the time the second contract was made.

Q. Then, it was after Mr. Rounds saw the boat in the condition as shown in photograph that you filed in your deposition, marked #3, that he annul-ed the old contract, and made a new contract?

A. As to the work on the hull. The work on the cabin was held until later in the season when we tore it away according to his orders.

Q. I hand you photograph and ask you to examine that photograph and state what it is a photograph of.

A. The frame work of the steamer "Golden Girl."

Q. Before or after the new contract with the defendants.

A. After the new contract.

Q. Is that a correct photograph of the steamboat as it then appeared?

A. It is.

Q. Will you file that as a part of your deposition, marked "Exhibit #4"?

A. I will.

Q. About what time was this photograph taken?

A. Sometime in October; I guess along the last of September or the first of October, 1911.

163 Q. I will ask you to state whether or not the written contract contemplated such improvements as are made as shown by photograph #4?

Defendant objects because incompetent. (Objec. overruled.)

A. The photograph doesn't show new work nor old; neither does a blue print show that. The sketch covered lots of the old work but everything you can see here is new. You can't see the old work.

Q. If the boat had been repaired under the old contract, that part that you say is new would not have been made new, would it, Mr. Pate?

Defendant objects.

A. A very small part.

Q. What part?

A. The question is, What part of this photograph as shown here would have been made new? Isn't it?

Q. No; Would not have been made new under the old contract?

A. The deck, the boiler deck would have been only patched. The boiler roof would not have been made new, only patched. There are numbers of small items that could be mentioned.

Q. I hand you another photograph and ask you to examine that photograph and state what it is a photograph of.

A. Photograph of the steamer, "Golden Girl," after she was complete.

Q. When was that photograph taken?

A. Sometime in December, 1911.

Q. That is the old steamer, "R. D. Kendall," which you say your Company re-built and re-christened "Golden Girl," isn't it?

A. It is but you cant see none of it. There is not a piece of the old steamer left except the whistle—in the photograph, you understand. Of course, I dont mean to say that is all there is left of the old boat but that is all that can be seen from there.

Q. The plans and specifications of the "Golden Girl" were the same plans of the old "R. D. Kendall"? Is that true?

A. Practically so.

Q. There were not plans or specifications furnished you for the reconstruction of the "Golden Girl"?

A. There were none.

Q. Isn't it a fact that the same specifications of the old
164–169 "R. D. Kendall" were followed out and new timbers put in in the manner which you say along the lines of the specifications of the old boat and which made the new boat?

A. As to the best of our ability to do so. We carried out the lines of the first agreement as closely as we could in the outline of the new boat.

Q. I will ask you to file the photograph which you have had handed you last as "Exhibit #5" as part of your deposition.

A. I will.

Q. Under the written contract, Mr. Pate, would the boat as shown in this photograph been entirely new except the whistle?

Defendant objects.

A. It would not.

Q. I understood you to say on your cross-examination that contract dated March 23, 1911, represented accurately the contract. Do

you mean to say that it was accurately the contract of that date or contracts made thereafter?

A. Contract of March, 1911, contracted thereto.

Q. Isn't it or not a fact that the written contract was entirely abandoned with the exception of the work therein designated to be done which was to be done under the new contract?

Defendant objects. (Obj. overruled.)

A. It was.

Recross-examination by Capt. W. T. ELLIS, Att'y for Def't:

Q. I don't understand you to say now that the old "R. D. Kendall" which has been re-named the "Golden Girl" is brand new in every respect except the whistle?

A. I was only speaking of what could be seen in the photograph.

Signature waived.

* * * * * * *

170 Thereupon on the 26th day of June, 1912, came the plaintiff by counsel and filed the following Depositions for Plaintiff. Said Depositions are in words and figures as follows:

Breckinridge Circuit Court.

CLOVERPORT FOUNDRY AND MACHINE CO., Plaintiff,
vs.
F. T. ROUNDS and SAMUEL JESSE, Defendants.

Deposition for Plaintiff.

The Deposition of Albert C. McKaughan, Taken at the Office of Marion Weatherholt, in the City of Cloverport, Breckinridge County, Kentucky, on Tuesday, the 25th Day of June, 1912, to be Read as Evidence on Behalf of Plaintiff in an Action Now Pending in Breckinridge Circuit Court.

Witness being first duly sworn, deposes as follows:

Examined by CLAUDE MERCER, Atty for Pl'ff:

Q. State your name, age, residence and occupation.

A. Albert C. McKaughan; 36 years old; Cloverport, Breckinridge County, Kentucky; Carpenter.

Q. How long have you lived in Cloverport?

A. I have lived in Cloverport three years the first day of last May.

Q. State whether or not you did any work on the Steamboat that was re-built by the Cloverport Foundary and Machine Company and re-christened the "Golden Girl."

A. I did.

Q. In what capacity did you work on the steamboat in controversy?

A. I was foreman of the job.

Q. What experience, if any, have you had in boat building?

A. I have been at the work the principal part of my life—that is since I have been a man.

Q. Who was your immediate boss in this job?

A. Wm. Pate.

Q. About what time of the month did you commence to work on the steamboat in controversy?

171 A. Sometime in May, the best I remember.

Q. What year?

A. 1911.

Q. Who gave you your instructions as to the work to be done on this steamboat?

A. Wm. Pate.

Q. As near as you can, briefly state the character of work that Mr. Pate outlined for you to do when you first commenced to work on this boat?

Defendant object-. (Obj. Sustained & Answer Excluded.)

A. Well, he told me that first we had to dock the boat; then, we had to put in new bow stem, and so repair the hull that it would make it pass Government Inspection, and we was to turn the boiler around—that is swap ends with the boiler; put the old machinery off and put on a different shaff-; make a new wheel with new cylinder timbers and we was to patch the deck—that is the part of the deck where it was bad; over-haul the boiler deck; build a dancing hall on the top of the boiler deck; lay a hardwood floor; In place of putting up one smoke srack we was to put up two and we was also to put on a swinging stage.

Q. You never saw the contract, that was made between the plaintiff and the defendant in March, 1911?

A. No, sir.

Q. Were you ever instructed by Mr. Pate to do additional work after first instructions to you?

Defendant objects. (Obj. sistained & Ans. Excluded.)

A. Yes, sir.

Q. About when were you told by Mr. Pate and directed to do additional work?

A. I disremember when but it seems it was the latter part of May.

Q. Do you know Mr. Rounds.

A. Yes, sir.

Q. Is this the gentleman present?

A. That is him.

Q. State whether or not you saw Mr. Rounds while this boat was being repaired and re-decked.

A. Yes, sir.

Q. When was that, if you know?

A. He was there twice and I won't be positive but I believe he was there three times. That was at the first part of the work.

Q. Did you hear a conversation between Mr. Rounds and

172 Mr. Pate on occasion of his first visit to the boat?

Defendant objects. (Obj. overruled.)

A. He came there one time and it seems to me like it was in May when I heard Mr. Pate and Mr. Rounds—they were going down the steps and I was either behind them or in front of them—and Mr. Pate told him there was going to have to be more work done on the boat and that they would have to have some understanding about it. I went on to my work and didn't hear any more.

Q. Was the steamboat inspector on this boat at any time you were there?

A. Yes, sir.

Q. When?

A. He was there when we first started to work on it, in May.

Q. What suggestions, if any, did the steamboat inspector make as to the work that was then being made?

Defendant objects.

A. He examined the work and his instructions to make it pass inspection was to take out the bow stem and put in such plank on the bow as was not sound and he said the cutting streak and one streak below the cutting streak ought to be taken off, and that the cutting streak on the port side ought to be taken off, and put on new to make it pass inspection.

Q. Was it after that that Mr. Rounds visited the boat and you heard the conversation between him and Mr. Pate?

A. Yes, sir, the best I can remember.

Q. After Mr. Rounds and Mr. Pate had the conversation of which you have spoken, what, if anything, was said or done by Mr. Pate with reference to instructions as to the work?

Defendant objects.

A. He told me to tear the hull down from the bottom and re-build it from the bottom.

Q. Was that after the conversation with Mr. Rounds?

A. Yes, sir it seems like it was not later than two or three days afterwards.

Q. In order that the Court may understand what the additional instructions meant, please state what additional work, if any, was done by you under the second instructions by Mr. Pate that was not to have been done under the first instructions by Mr. Pate.

Defendant objects.

A. According to my judgment, in regard to the hull, it would be four time as much.

Q. Why would it be four time as much?

Defendant objects.

173 A. Instead of patching the hull it necessitated taking all the planks off which caused a whole lot more work; it caused the tearing down all the top timbers, taking out almost every futtock in the boat, and re-placing them as new, and also re-planking the hull with so much more planking that I think it would necessitate

as much as four times the labor and material, according to my judgment.

Q. State whether or not you saw Mr. Rounds or Mr. Jesse on this boat after the time that you have testified concerning.

A. I seen a man that Mr. Pate said was Mr. Jesse but I am not sure about Mr. Rounds.

Q. About when was it that you saw Mr. Jesse there?

Defendant objects. (Obj. overruled.)

A. It seems like to me that it was in June. I know it was after we had the hull almost complete.

Q. Under the first or second instructions?

A. Second instructions. If I am not mistaken, we were about to finish up the new deck on the hull when Mr. Jesse was there.

Q. How long after Mr. Jesse had been there before you found out who he was?

A. He hadn't more than gotten out of sight.

Q. What did Mr. Jesse say, if anything, to Mr. Pate, about the work?

Defendant objects. (Obj. overruled.)

A. All that I heard was that he said that the cabin that we had held up there all this time didn't look in proportion *of* the rest of the work, and he thought it ought to be torn down and all new, and he says, "I am going to talk to Mr. Rounds."

Q. What work, if any had been done up to this time on the old cabin?

A. Not more than what was sufficient to hold it in position.

Q. After Mr. Jesse was there, state whether or not you received any instructions from your boss as to this cabin?

Defendant objects. (Obj. Sustained.)

A. We went on to work and worked a few days and we got up to work on the cabin and Mr. Pate come down to the boat one morning and I says, "We are up to the cabin." He said to just wait until he could go and call Mr. Rounds. He was gone about thirty minutes and he came back and said to tear it all down. He said that was what Mr. Rounds said.

Q. Did you tear it down?

Defendant objects.

A. Yes, sir, and built every bit of it new except the hog chain braces.

174 Q. About when was it that you completed this boat under the third instructions that you received from your foreman?

Defendant objects. (Obj. overruled.)

A. I don't believe I can tell you that. I don't remember. It was in the winter sometime.

Q. What was the name of this boat that you have been talking about when it first arrived at Cloverport?

A. "R. D. Kendall."

Q. You saw the boat before any work was done on it at all, did you not?

A. Yes, sir.

Q. You were with the job until it was completed, were you not?

A. Yes, sir.

Q. State to the Court what part of the old "R. D. Kendall" was actually left in the new boat that was re-christened the "Golden Girl" when you delivered the boat to the defendants.

A. The bottom and the hog chain braces and the boiler and part of the pipes.

Q. Did you personally supervise the actual work done in this steamboat re-construction?

A. I did.

Q. What character of material was used in the re-construction of this boat?

A. The hull was what I would call first class material in every respect and the cabin lumber was No. 1, what I would call No. 1 good material.

Q. What character of workmanship was used in the work on this boat?

A. Well, according to my judgment, it was first class.

Q. How long have you been engaged in boat building?

A. I haven't actually been engaged all the time but more or less for 10 or 12 years.

Q. Where have you worked as a boat builder?

A. I have worked here and I have built some boats at Stephensport and I repaired boats at Troy, Ind.

Q. At the time that you ceased to work on this boat, what condition was the boat in?

A. I would consider she was in first class condition in every particular, as far as I know.

Q. I don't believe you kept the account of the labor and material, did you?

175 A. No, sir, I didn't keep no account of the material at all. I kept the labor and turned it in to Mr. Pate.

Q. Please give us the benefit of your judgment as to how much actual work was done on this steamboat in controversy as compared to the work that was to have been done under the first contract, as received by you?

Defendant objects.

A. That is a pretty hard question but I imagine it would take almost three times as much to complete it like it was after I was instructed to do it first.

Cross-examined by FLOYD LASWELL, Att'y for Def'ts:

Q. Who are you working for at present?

A. Working for the Cloverport Foundary and Machine Company.

Q. They are the plaintiffs in this action?

A. Yes, sir.

Q. How long have you been in the employe of the Cloverport Foundary and Machine Company?

A. Been about three years and three months.

Q. What experience did you say that you had in boat and ship building?

A. I didn't say ship building. I have been building boats and helping my father ever since I was a boy; have been over-seeing—not steady, you understand—for something like 8 or 9 years.

Q. What kind of boats have you been working on?

A. Principally small boats until this one. This is my first steamboat.

Q. Were you brought here on the 13th day of June when the plaintiff had some other depositions taken? Were you brought up here for that purpose?

A. I came up here and was asked some questions but my deposition wasn't taken.

Q. I will ask you if you talked to any of the plaintiffs or the attorney for plaintiff about this case since you were brought up here.

A. Mr. Pate and I have spoken about the case a time or two.

Q. I will ask you to state whether or not you have had your memory refreshed about the facts in the case.

A. No, if I have, I don't remember it. I don't think I have. Mr. Pate and I have talked the matter over in an off hand way.

Q. He has asked you or talked to you about the facts that you would testify to?

A. No, sir.

176 Q. Positive of that?

A. Yes, sir.

Q. Do you know why you were not placed on the stand the other day?

A. No, I do not.

Q. You came up and talked to them and you were sent back?

A. Yes, sir.

Q. The conversation that you say that you heard Mr. Rounds and Mr. Pate have sometime in May on that boat, who else was present?

Q. And, what was it that you heard?

A. I just heard Mr. Pate say to Mr. Rounds that there would have to be additional work done on the boat and they would have to come to some agreement or understanding.

Q. But, you did not at that time, or at any time, hear Mr. Rounds agree or enter into any subsequent contract with Pate or anybody connected with the Cloverport Foundary and Machine Company, did you?

A. All I ever heard was Mr. Rounds told Mr. Fred May——

Q. I am talking about anything that was said with Mr. Pate or some officer of the Cloverport Foundary and Machine Works.

A. Not with any officer.

Q. You say you are familiar with that contract of March 23, 1911?

A. No, sir.

Q. Mr. Mercer asked you what was the difference between the work under the first instructions and the work that you did do. You said there was about three times as much. You don't know whether the first instructions that you got were embodied in that contract or not?

A. Only by what Mr. Pate said. I never seen the contract. I know my instructions, was all.

Q. You don't know whether you got instructions to build that boat according to the contract or not?

A. No, sir.

Q. You say Mr. Abram, the inspector, told you or told Mr. Pate that certain parts of that hull would have to be torn out?

A. Yes, sir.

Q. Why?

A. To make it pass inspection.

177–179 Redirect examination by CLAUDE MERCER, Att'y for Pl'ff:

Q. You started to say something in cross-examination about what Mr. Rounds said to Fred May. State what that was.

Defendant objects.

A. He come on the boat and Fred was talking about the work, Fred said the deck ought to be made new. Mr. Rounds said he would rather have that old deck made new than patched up if he had to pay for it.

Q. What was Fred May doing?

A. He was working as assistant carpenter under myself.

Recross-examined by LASWELL, Att'y for Def'ts:

Q. You say Mr. May was working under you?

A. Yes, sir.

Q. Did you hear this conversation between Mr. May and Mr. Rounds?

A. Yes, sir.

Q. Mr. Rounds said he didn't want to patch the cabin?

A. He said he would rather have *have* it made new than patched up.

Q. He didn't order it done, did he? Or say that he wanted them to do it?

A. Not to me.

Q. Didn't you hear Mr. Rounds say that if they left that rotten stuff in that deck that the inspectors would make them tear it out?

A. No, sir.

* * * * * * *

180 Also the deposition of Marion Weatherholt taken at the same time, place, and for the same purpose as set forth in caption.

Witness being first duly sworn, deposes and says:

Examined by CLAUDE MERCER, Att'y for Pl'ff:

181–617 Q. State if you can, how much lumber was to have been furnished under the contract of March 23, 1911, and how much lumber was actually furnished during the whole period in the re-construction of the "Golden Girl."

Defendant objects and excepts.

A. Under the first contract of March 23, 1911, my estimate, which was made up carefully, called for eighteen thousand and some few feet and in the completion of the boat, "Golden Girl," it required about fifty thousand feet.

Q. The *the* contract of March 23, 1911, the written contract, only called for prqctically eighteen thousand feet of lumber?

Def't objects and excepts.

A. It did.

Q. And, the lumber that you actually furnished this, or the work that was done on this steamboat, consumed practically fifty thousand feet?

Def't objects and excepts.

A. It did.

Signature waived.

* * * * * * *

618 At a Circuit Court Began and Held at the Court House in Hardinsburg, Ky., on the 13th Day of October, 1913.

Pres.: Hon. J. R. Layman, Judge in and for the 9th Judicial District of Kentucky.

Thereupon on the 13th day of Oct. 1913, the following Judgment was entered in Order Book 36, pages 426-428.

CLOVERPORT FOUNDRY AND MACHINE COMPANY, Plaintiff,
vs.
F. T. ROUNDS and SAMUEL JESSE, Defendant.

Judgment.

This cause coming on for trial, upon the pleadings, exhibits, testimony and arguments of counsel for the parties litigant, and the Court being sufficiently advised in the premises both adjudge:

(*a*) That the exceptions of defendants to depositions be and they are overruled and sustained, as noted on the depositions. Defendants except to the ruling of the Court in overruling of any one of their exceptions to the plaintiff's depositions.

(*b*) That the answer and counterclaim of the defendants, F. T. Rounds and Samuel Jesse, be and the same is dismissed, and that they recover nothing thereby, to which they object and except.

(*c*) That the plaintiff, Cloverport Foundry and Machine Company, recover of the defendants, Frank T. Rounds and Samuel

Jesse, the Sum of five thousand six hundred and sixty eight and 65/100 Dollars ($5,668.65), with interest thereon from the 2nd day of February, 1912, and its costs expended and may have execution, to which defendants object and except.

619 (*d*) That the specific attachment issued by the Clerk of this Court, and levied by the Sheriff of Breckinridge County, upon the steamboat known as the "Golden Girl" be and the same is now sustained, to which the defendants object and except.

(*e*) That by virtue of said attachment and the law in the premises, the said plaintiff has a lien upon the following described property, for the payment of the Judgment decreed herein, together with all interest and cost, to-wit:

A steamboat known as the "Golden Girl," together with all the fixtures, machinery, appliances, apparatus, and every and all things attached thereto and used in the proper usage of said steamboat as a mode of transportation of passengers and freight.

And that said steamboat thus described be sold and a sufficiency of the proceeds thereof as may be necessary for that purpose, be applied to the payment of said debt, interest and cost, to which defendants object and except.

Lee Walls, Master Commissioner of this Court, is ordered to make said sale at the wharf in the City of Cloverport Kentucky, at public outcry to the highest and best bidder, on a credit of three months. He will take from the purchase bond with good surety for the purchase price, payable to himself, and bearing six per cent interest from date until paid. Before making said sale he will advertise the time, terms and place thereof, and the sum for which it is to be sold, by written or printed notices, therein described the property to be sold, which notices shall be ported up: One at the courthouse door, in Hardinsburg, Breckinridge County, Kentucky, and three or more in the vicinity of and one at the wharf in Owensboro,

620–693 Kentucky, and three or more in and near Cloverport, prior to the day of said sale; that in addition to such notices, said Commissioner is directed to cause the time, place, terms of sale, the purpose for which it is to be made, and the amount for which it is to be sold, together with a description of said property ordered to be sold, to be published in a newspaper published in Breckinridge County, for a- least once a week for three successive weeks next preceding the day of sale. Before making said sale he will cause said property to be appraised as required by law.

The defendants, F. T. Rounds and Samuel Jesse, object and except to the rulings of the Court in dismissing their counterclaim and answer herein, and to each and every part of the Judgment of this Court herein, and pray an appeal to the Court of Appeals, which is granted.

By agreement of plaintiff and defendants the presiding Judge of this Court approves and signs this Judgment on this 13th day of October, 1913, being the First day of the October Term, 1913, of the Breckinridge Circuit Court.

J. R. LAYMAN, *Judge.*

* * * * * * *

694–715 Afterwards at Court of Appeals held as aforesaid on the 25th day of September, 1914, the following order was entered, to-wit:

ROUNDS, &c.,
vs.
CLOVERPORT FOUNDRY & MACHINE CO.

Breckinridge.

The court being sufficiently advised it is ordered that the petition for rehearing in this case be and the same is now overruled.

716 In the Supreme Court of the United States, October Term, 1914.

No. 669.

FRANK T. ROUNDS and SAMUEL JESSE, Plaintiffs in Error,
vs.
CLOVERPORT FOUNDRY & MACHINE COMPANY, Defendant in Error.

Stipulation.

It is stipulated between the Plaintiffs in Error and the Defendant in Error, as follows:

First. That the parts of the record in this action which are printed as the appendix to the brief of Counsel for Defendant in Error in support of his motion heretofore entered on the 7th day of December, 1914, to dismiss or affirm or transfer to the Summary Docket, shall not be re-printed but shall be considered as part of the record in this action to be submitted upon its merits and upon said motions on February 23, 1915; but that all other parts of the record called for by the Plaintiffs in Error and the Defendant in Error shall be printed by the Clerk.

Second. The parts of the record to be printed by the Clerk are as follows:

1. The special demurrer of the Plaintiffs in Error to the jurisdiction of the State Court.

2. The order of the Breckinridge Circuit Court overruling the demurrer to the jurisdiction.

3. The judgment of the Breckinridge Circuit Court, sus-
717 taining the specific attachment and decreeing a sale of the steamboat, "Golden Girl."

4. The order of the Court of Appeals of Kentucky overruling the petition of the Plaintiffs in Error for a rehearing.

5. The testimony in chief of Marion Weatherholt, J. W. Pate, Albert C. McKaughn and Frank Rounds.

The parts of the record printed in the appendix to the brief of Counsel for Defendant in Error and referred to, are as follows:

1. Petition.
2. Answer and Counter Claim.
3. Reply.
4. Amended Answer and Counter Claim.
5. Reply to Amended Answer and Counter Claim.
6. Opinion by Judge Miller of Court of Appeals of Kentucky.
7. Petition for Writ of Error.
8. Writ of Error.
9. Assignment of Errors.

It is now stipulated that the parts of the record printed in said brief together with the parts of the record indicated herein, when printed, shall constitute the entire record for the consideration of the Court upon submission of this action upon its merits and upon said motions.

It is further stipulated that the briefs filed on the making of said Motion on the 7th day of December, 1914, shall be considered and read by the Court upon the submission of this case on February 23, next, and that additional briefs may be filed by both parties, but that such additional briefs, if any, shall be filed at such time as will not prejudice the submission of this action for judgment February 23, next.

WILLIAM T. ELLIS,
Counsel for Plaintiffs in Error.
CLAUDE MERCER,
Counsel for Defendant in Error.

[Endorsed:] 669/24413.

718 [Endorsed:] File No. 24,413. Supreme Court U. S., October term, 1914. Term No. 669. F. T. Rounds et al., Pl'ffs in Error, vs. Cloverport Foundry & Machine Company. Stipulation as to printing record. Filed February 8, 1915.

Endorsed on cover: File No. 24,413. Kentucky Court of Appeals. Term No. 669. F. T. Rounds and S. A. Jesse, plaintiffs in error, vs. Cloverport Foundry & Machine Company. Filed October 23d, 1914. File No. 24,413.

FILED
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JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 669.

FRANK T. ROUNDS AND SAMUEL JESSE, - - - - - - - Plaintiffs in Error,

versus

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - - - - Defendant in Error.

In Error to the Court of Appeals of the State of Kentucky.

Brief of Defendant in Error in Support of Motions to Dismiss or Affirm or Transfer to the Summary Docket.

CLAUDE MERCER, Hardinsburg, Ky.,
Attorney of Record for Defendant in Error.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 669.

FRANK T. ROUNDS AND SAMUEL JESSE, - - - - - - - Plaintiffs in Error,

versus

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - - - - Defendant in Error.

In Error to the Court of Appeals of the State of Kentucky.

Brief of Defendant in Error in Support of Motions to Dismiss or Affirm or Transfer to the Summary Docket.

CLAUDE MERCER, Hardinsburg, Ky.,
Attorney of Record for Defendant in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1914. No. 669.

FRANK T. ROUNDS & SAMUEL JESSE, - *Plaintiffs in Error,*

versus

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - - - - *Defendant in Error.*

MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM OR TO TRANSFER TO THE SUMMARY DOCKET.

Comes now Cloverport Foundry & Machine Company, defendant in error, by its attorney of record herein, and upon the record in this cause moves this Honorable Court:

First: To dismiss the writ of error herein on the ground that this court has not jurisdiction thereof, no federal question being involved herein.

Second: To affirm the judgment and decision of the Court of Appeals of Kentucky, the Supreme Court of the State, on the ground that it is manifest that this writ of error was taken for delay only and that the question on which the decision of this cause depends is so frivolous as not to need further argument.

Third: To transfer this cause for hearing to the summary docket, if this court should refuse to dismiss or affirm, because the case is of such a character as not to justify extended argument.

Fourth: To award the defendant in error damages in the sum of ten per cent of the judgment, under number twenty-three of the Rules of this court, because it is manifest and clearly appears that the writ of error in this cause has been taken merely for delay.

CLAUDE MERCER, Hardinsburg, Ky.,
Attorney of Record for Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1914. No. 669.

FRANK T. ROUNDS & SAMUEL JESSE, - *Plaintiffs in Error,*

versus

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - - - - - *Defendant in Error.*

NOTICE OF MOTIONS.

To WILLIAM T. ELLIS, Attorney for Plaintiffs in Error:

Your are hereby notified that the defendant in error in the above-entitled cause will, on Monday, the 7th day of December, 1914, on the meeting of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard upon the record and papers in this cause, submit, for the consideration of said court, the foregoing motions and each of them and the brief in support thereof, hereto attached, including portions of the record in said cause as contained in an appendix thereto, all of which are now served upon you herewith.

CLAUDE MERCER, Hardinsburg, Ky.,
Attorney of Record for Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1914. No. 669.

FRANK T. ROUNDS & SAMUEL JESSE, - *Plaintiffs in Error,*

versus

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - - - - *Defendant in Error.*

BRIEF OF DEFENDANT IN ERROR IN SUPPORT OF MOTIONS TO DISMISS OR AFFIRM OR TRANSFER TO THE SUMMARY DOCKET.

We have printed, as an appendix to this brief the following: Pleadings and the Opinion of the Court of Appeals of Kentucky; Petition for Writ of Error; Writ of Error; Assignment of Errors. In addition we have printed in the brief, in full, the Statutes of the State of Kentucky which affect the rights of the parties to the action, and the subject-matter of the litigation.

Such printed matter, we submit, is sufficient to enable this court to act understandingly in disposing of the motions, and is a compliance with the rules of this court.

Walston v. Nevin, 128 U. S. 578.
Carey v. Houston, etc., R'y Co., 150 U. S. 170, 179.

STATEMENT OF FACTS.

On the fifth day of June, 1914, the Court of Appeals of Kentucky affirmed a judgment of the Breckinridge Circuit Court in favor of the defendant in error against the plaintiffs in error, for the sum of $5,668.35, and awarded damages thereon. From that judgment the plaintiffs in error have prosecuted this appeal.

The controversy embodied in this action arose out of a contract for the rebuilding of a tow boat, then known as the R. D. Kendall, and converting her into a boat to serve the purpose of carrying passengers on the Ohio River, and thereafter named the "Golden Girl." The plaintiffs in error, Frank T. Rounds and Samuel Jesse, then and now are citizens of Owensboro, Daviess County, Ky., a city located on the Ohio River, and the defendant in error, Cloverport Foundry & Machine Company, is a corporation existing under the laws of the State of Kentucky, with its legal residence and place of business at Cloverport, Breckinridge County, Ky., also on said river. In March, 1911, the plaintiffs in error contracted with the defendant in error to rebuild the said boat along the lines agreed upon. The contract was made in Kentucky, by citizens of Kentucky, and was to be and was performed in Kentucky. In May and August of said year additional contracts were made contemplating more extensive improvements in the rebuilding of said boat, than contracted for in March previous thereto. Upon the completion of the boat in December, 1911, at its place of business in Cloverport, Ky., the defendant in error de-

manded compensation then due it under the contract, for the work done on said boat and refused to surrender the possession of said boat to the plaintiffs in error until it had been paid, as per the stipulations in the contract, which provided that upon the completion of the work upon the boat, the contract price of the work was due and payable. This the plaintiffs in error refused to do and upon such refusal the defendant in error instituted this action in the Breckinridge Circuit Court against the plaintiffs in error, seeking to recover the amount of the contract price for work done, to-wit: The sum of $5,668.35, and sought and obtained the issual of a specific attachment which was levied upon the boat in question to secure the payment of said sum of money, as is authorized by Kentucky law, hereinafter fully set forth. After the levy of said attachment the plaintiffs in error, by virtue of said law, presently cited, executed a forthcoming bond to the levying officer and took said boat into their possession and have had said boat in their possession since said time.

The action is *in personam,* and not *in rem.* It merely seeks enforcement of the contract with the owners, and, incidentally, as provided for by law, an attachment was issued and levied upon the boat to subject it to the payment of the money due on the owner's contract.

Under Kentucky procedure, the jurisdiction of the court was challenged by the filing of a special demurrer by the counsel for the plaintiffs in error, who contended that the contract sued upon is maritime, and, therefore, exclusively cognizable in admiralty. This contention

was not sustained by the Breckinridge Circuit Court, and its action in overruling the special demurrer was approved by the Kentucky Court of Appeals.

I.

ARGUMENT OF MOTION TO DISMISS.

This being a writ of error to the highest tribunal of a State, this court does not acquire and can not take jurisdiction except by virtue of Section 237 of the Judicial Code, being Section 709 of the Revised Statutes, United States.

It is familiar law that this court may exercise jurisdiction to review only what are known as federal questions. These must have been raised in the State court and decided adversely to the complaining party by the highest court of the State. All questions decided by a State court, the solution of which depends upon questions of State law, are not reviewable in this court.

> Eustis v. Bolles, 150 U. S. 361.
> Capital Bank v. Cadiz Bank, 172 U. S. 425.
> Vandalia R'y Co. v. Indiana, 207 U. S. 359.
> Seaboard Air Line R'y Co. v. Duvall, 225 U. S. 477.

In Eustis v. Bolles, 150 U. S. 361, this court says:

> "It is settled law that, to give this court jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a federal question was presented for decision by the State court, but that its decision was necessary to the determination of the cause, and that it was actually decided ad-

versely to the party claiming a right under the federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it. Murdock v. Memphis, 20 Wall, 590; Cook County v. Calumet & Chicago Canal Co., 138 U. S. 635.

"It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not federal, has been also raised and decided against such party, and the decision of the latter question is sufficient notwithstanding the federal question to sustain the judgment, this court will not review the judgment."

THERE IS NO FEDERAL QUESTION INVOLVED IN THIS CAUSE.

Sections 2480 to 2486, inclusive, of the Kentucky Statutes, giving a lien upon water craft, read as follows:

"Section 2480. Except the captain, all the officers and hands employed on board a steamboat or other brig, schooner, or sloop, or model barge, shall have a lien on the boat or vessel, or engine, tackle, furnishing and apparel, for wages, whether contracted for or earned in or out of the State, with priority therefor over any other debt due from the owner of the boat or vessel, and over all other liens thereon. Mechanics, tradesmen and others shall also have a like lien for work, supplies, materials, stores and provisions done or furnished on or toward the building, repairing, fitting, furnishing or equipping the boat or vessel in this State, with priority thereafter over any other debt or debts of the owner except to the officers and hands, and over all other liens thereafter created. When so done or furnished out of this State, there shall be like lien

therefor, which shall have precedence next after that given when done or furnished in this State; but if done or furnished out of the State, subsequent to that done or furnished in this State, the liens shall be joint and equal.

"Section 2481. A steamboat or other vessel in the last section named, and owner, shall also be liable to indemnify the party injured for any damage unlawfully done by her to any other boat, vessel or river craft, or to any other property, through the willful or negligent conduct of her officers or crew, and for any other damage willfully or negligently committed by her officers or crew while acting for her as such.

"Section 2482. The lien given in Section 2480, and the liability mentioned in Section 2481 of this article, may be enforced by attachment from the court having jurisdiction.

"Section 2483. Before issuing an attachment under this article, bond, with good surety, shall be given to the owners of the boat, by that designation, to indemnify for all damages and costs incurred thereby, if it shall appear that the attachment had been wrongfully obtained, on which suit may be brought and recovery had by any person injured by the attachment; but nothing herein shall vitiate a bond taken in any other mode.

"Section 2484. The boat, vessel or other property attached under this article may be released upon the execution of bond with good surety, to the plaintiff, in the penalty to be named in the order for the attachment, conditioned to have the property attached forthcoming, if the court shall so order, or otherwise perform the decree of the court.

"Section 2485. All persons having liens under this article against any boat or vessel may unite in a suit to enforce the same; and any person having a lien, who is not so united, may, by petition filed by leave of court, become a plaintiff in any suit pend-

ing to enforce a lien without the issuing of any other or additional process on said petition.

"Section 2486. The liens given by this article shall not be enforced against a purchaser without actual notice thereof, unless suit be instituted within one year from the time the cause of action accrued, or unless notice thereof be indorsed on or attached to the enrollment of the boat or vessel."

This court has repeatedly announced that a contract for the construction of, or repairs to, or materials or supplies furnished to a vessel is *not maritime,* and in enacting laws to provide a remedy for a breach of such a contract by the State Legislatures, or for the performance of such a contract, that in so doing a State Legislature does not invade the Federal Constitution which has delegated to admiralty the exclusive cognizance of maritime contracts, and, if we are not mistaken, this court held in Edwards v. Elliott, 21 Wall, 532, presently cited more fully, that even where the local law provided a remedy *in rem,* that such is not unconstitutional. But certainly where the local law provided for a remedy *in personam,* such has uniformly been approved of by this court as not in conflict with the Federal Constitution, including the local provisions for the issual of attachments or executions in furtherance of the relief provided for as against the owner or owners of a vessel. Although called upon in many instances to assume jurisdiction concerning contracts growing out of the construction or repairs to vessels, this court has invariably refused to do so. Indeed, the unbroken line of cases of this court, commencing in the very beginning of the his-

tory of the court to 1907 reveal that *contracts concerning the construction or repair of vessels are uniformly declared not maritime,* and the State courts have jurisdiction to try all controversies arising out of such under the local law of the State where the contract was made and performed. The record in this case, incorporated in the Appendix discloses that the subject of the controversy was concerning the performance of a contract for the reconstruction of a steamboat, and that the owners of the vessel made the contract in Kentucky with a citizen of Kentucky and the contract was performed in Kentucky, and the action for its breach was brought under authority of Kentucky law against the owners of the boat and relief was granted the defendant in error, as provided for under the law of Kentucky.

The action of People's Ferry Co. v. Beers, reported in 20 Howard, pages 393-402, and 15 Law Edition, 961-965, is authority on the question of jurisdiction involved in this action. The opinion of the court was delivered by Mr. Justice Catron, on May 4, 1858. All quotations in this brief are from the U. S. Supreme Court Reports, Second Law Edition.

> "This was a libel filed by Beers and Warner as assignees of Crawford & Terry, the builders against the new steam ferryboat called The Jefferson for a balance due the builders on account of work done and materials employed in constructing the hull of the vessel. It is alleged that Crawford & Terry contracted to build for Wilson Small, of New York, three ferryboats, at Keyport, New Jersey, for $12,-000.00 each; that they built one of them, to-wit: The

Jefferson; that they have a lien for the unpaid balance of the price and that the vessel is now in the southern district of New York.

"Process having been issued, the People's Ferry Company, of Boston, intervened as owners and filed their claim and answer, denying the facts alleged.

"On the trial, the defendants proved and put in evidence a written agreement for building the hulls of three vessels, between Wilson Small who was building under a contract for the Ferry Company, and Crawford, by which the latter was to contract, build and deliver at New York City, the hulls of the three vessels. The contract provides that the boats and materials, as soon as the same may be fitted for use, shall be the property of Small, subject only to the lien of Crawford for such sum or sums of money as may be due under the contract.

"When the Jefferson was nearly finished she was taken to New York and delivered to Small to receive her engines; and afterwards, Crawford & Terry assigned their claims to the libelants, Beers & Warner. The balance due to the builders was over $7,000.00 and for this sum the libelants obtained a decree of condemnation.

"The only matter in controversy is whether the District Courts of the United States have jurisdiction to proceed in admiralty to enforce liens for labor and materials furnished in constructing vessels to be employed in the navigation of waters to which the admiralty jurisdiction extends."

In dismissing the libel for want of jurisdiction, this court said:

"The admiralty jurisdiction in cases of contract, depends primarily upon the nature of the contract, and is limited to contracts, claims and services, purely maritime and touching rights and duties appertaining to commerce and navigation. 1 Conchling, M. L. 19.

"In considering the foregoing description, it must be borne in mind that liens on vessels encumber commerce, and are discouraged; so that where the *owner is present no lien is acquired by the material man; nor is any where the vessel is supplied or repaired in the home port.* The lien attaches *to foreign ships and vessels only in favor of the carpenter who repairs in a case on necessity and in the absence of the owner.* It would be a strange doctrine to hold the ship bound in a case where the owner made the contract in writing, charging himself to pay by installments for building the vessel at a time she was neither registered or licensed as a sea-going ship. So far from the contract being purely maritime, and touching rights and duties appertaining to navigation (on the ocean and elsewhere) it was a contract *made on land to be performed on land.* The wages of the shipwrights had no reference to a voyage to be performed; they had no interest or concern whatever in the vessel after she was delivered to the party for whom she was built; they were bound to rely on their contract. It was thus held by the first Judge Hopkinson, in 1781, who then declared as respects ship-builders, that 'the practice of former times doth not justify the admiralty's taking cognizance of their suits.

"Clinton v. The Brig Hannah, Bee's Adm., add. 419. *And we feel warranted in saying that at no time since this has been an independent nation has such a practice been allowed.* Turnbull v. Enterprise, Bee's Adm. 345."

The law of this case has been approved in The Mary F. Chisholm, 129 Fed. 817, denying admiralty jurisdiction over a sale to fisherman about to go on a voyage on lay contract of tobacco, clothing, and other articles for personal use; also, approved in the Winnebago, 141 Fed. 949, upholding Michigan Comp. Law C. 298, giving lien

to contractors and persons furnishing labor and materials in construction of a dock, reserving a lien to the seller, not a maritime contract.

The Kentucky Court of Appeals has also followed the law in this case in the following other cases decided by it in all of which cases the jurisdiction of the Kentucky Court was challenged on the theory that the subject-matter of each action was maritime and only cognizable in admiralty: Stewart v. Harry, 3 Bush, 438 to 448. This action was for damages sought by the owner of a boat which was sunk in collision on the Ohio River against the owner of the other boat in the collision. The plaintiff recovered damages in the sum of $4,210.52, and the judgment was sustained by the Court of Appeals of Kentucky, which dismissed the plea to its jurisdiction interposed by the defendant, holding that the law prevailing in Kentucky providing relief for such was not an infringement upon the Judiciary Act of 1789, which provided that the District Courts of the United States "shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under the laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden; * * * saving to suitors in all cases, the right of a common-law remedy, where the common law is competent to give it." The Kentucky Court quoted the cases of The Hine v. Trevor, 4 Wallace, 555, and The Moses Taylor, *Ibid.* 411, 22 Howard, 243. Also, in the cases of Marshall, etc., v. Curtis, 5 Bush, 697, and

Hyatt v. Reitz & Haney, 4 Bush, 395, both of which were actions growing out of the repairs done upon steamboats, upon the authority of this court in the cases cited, the Kentucky Court of Appeals assumed jurisdiction to try the actions under the local laws of the State and dismissed the pleas to its jurisdiction interposed in each case by the owner of the boat. In addition to the authorities cited in the case of Stewart v. Harry, *supra*, the additional authority of this court was cited in the case of Martin v. Hunter, 1 Wheaton, 304.

Another case decided by this court directly in point with the contention of the defendant in error is the case of Roach & Long v. William Chapman, *et al.*, decided January 30, 1860, reported in 22 Howard, 129-132, and 16th Law Edition, 294-295. The facts of the case as given by the Law Edition, *supra*, are:

> "The libel in this case was filed in the District Court of the United States for the Eastern District of Louisiana, by the appellants, who claimed a lien under the general admiralty law and the law of the State of Kentucky, for $2,947.48, part of the price of the engine and boiler of the steamer, Capitol, built for and furnished said steamer at Louisville, Kentucky.
>
> "The said court entered a decree in favor of the libelants. The circuit court, on appeal, reversed this decree, and dismissed the libel; whereupon the libelants took an appeal to this court."

Mr. Justice Grier delivered the opinion of the court:

> "The libelants claim to have a lien on the steamboat Capitol, for a balance due them for machinery furnished in her construction. The boat was built

in Louisville, Ky., and the libelants furnished the boiler and engines. Payments were made as the work progressed and bills of exchange were taken for the balance due after the vessel was completed. These were not paid. The boat left the port and State, and was afterwards sold, and became the property of the claimants.

"Among other things the claimants plead to the jurisdiction of the court. This plea was sustained by the circuit court.

"*A contract for building a ship or supplying engines, timber, or other material for her construction, is clearly not a maritime contract.*

"Any *former dicta or decisions which seemed to favor a contrary doctrine were overruled by this court in the case of the People's Ferry Company* v. *Beers,* 20 Howard, 400.

"It is clear therefore that the judgment of the circuit court dismissing the libel for want of jurisdiction, must be affirmed, without noticing other questions raised by the pleadings."

The law announced in this case that contracts for shipbuilding are not maritime and that local laws of the State which provide a remedy for breaches of such contracts *in personam* are not unconstitutional, has been followed in the Winnebago, 141 Fed. 949; Delaney, etc., Co. v. The Winnebago, 142 Mich. 88, and the San Rafael, 141 Fed. 280.

In Edwards v. Elliott, 22 Wallace, 532-558, 22 Law Ed. 487-492, this court expressively announces that a contract for the construction of vessels, or repairs thereon are not maritime, and that State laws which provide for a lien upon vessels under such contracts and their enforcement by proceedings *in personam* or *in rem,* are not unconstitutional.

In Iroquois Transportation Co. v. Delaney Forge and Iron Co., and Same v. George W. Edwards, etc., heard together, 205 U. S. 354-464, 51 Law Ed. 836-841, quoting from the Law Edition, this court said:

"Statement by Mr. Justice Day:

"These cases may be considered together. They are writs of error to the judgments of the Supreme Courts of Michigan affirming the decrees of the circuit court of Wayne County, Mich., enforcing liens for the Delaney Forge & Iron Company, defendant in error, in 218, and George W. Edwards and others, defendants in error, in 219, and intervenors in the original case.

"The Winnebago, a steel steamer of 1,091 tons burned, was built by the Columbia Iron Works, at St. Clair, Mich. The contract price was $95,000.00; date of contract, March 8, 1902; between the Columbia Iron Works and John J. Boland and Thomas J. Prinderville. * * * The steamer was launched March 21, 1903. After she was in the water work on the contract continued."

Quoting further from the 51st Law Edition:

"Mr. Justice Day delivered the opinion of the court:

"The Michigan Statutes under which liens are claimed in this case are as follows:

"(10,789) Sec. 2. Every water craft of above five tons burden, used, or intended to be used, in navigating the waters of this State, shall be subject to a lien thereon:

"First, for all debts contracted by the owner or part owner, master, clerk, agent, or steward of such craft, on account of supplies and provisions furnished for the use of the said water craft, on account of work done, or services rendered, on board of such

craft by seamen or any other employe other than the master thereof; on account of work done, or service rendered by any person, in or about the loading or unloading of said water craft; on account of work done or materials furnished by mechanics, tradesmen, or others, in or about the building, repairing, fitting, furnishing or equipping such craft; Provided, That when labor shall be performed or materials furnished, as aforesaid, by a subcontractor or workmen other than an original contractor, and the same is not paid for, said person or persons may give the owner or his agent, or the master or clerk of said craft, timely notice of his or their said claim, from thenceforth said person or persons shall have a lien upon said craft pro rata for his or their said claims, to the amount that may be due by said owner to that original contractor for work or labor or then done on said water craft."

It was contended that to seize the vessel and subject her to sale and the proceeds thereof to distribution in the State court would be in direct conflict with the exclusive jurisdiction in admiralty in the courts of the United States in favor of liens of a maritime character, and therefore the Michigan Act is institutional.

Quoting further from said Law Edition on page 840 is the following:

"It is urged that the attempt to enforce the lien on the vessel was while she was engaged in interstate commerce, and therefore proceedings against her were unlawful and void, in view of the exclusive control of this subject by Congress under the Constitution and laws of the United States. But it must be remembered that concerning contracts not maritime in their nature the State has authority to make laws and enforce liens, and it is no valid objection

that the enforcement of such laws may prevent or obstruct the prosecution of a voyage of an interstate character. The laws of the State enforcing attachment and executions in cases cognizable in State courts have been sustained and upheld. Johnson v. Chicago and P. Elevator Co., 119 U. S. 388-398, 30 Law Ed. 447-450, 7 Sup. Ct. Rep. 254. The State may pass laws enforcing the rights of its citizens which affect interstate commerce, but fall short of regulating such commerce in the sense in which the Constitution gives exclusive jurisdiction to Congress. Sherlock v. Alling, 93 U. S. 99-103, 23 L. Ed. 819-820; Kidd v. Pearson, 128 U. S. 1, 23, 32 L. Ed. 346, 351, 2 Inter. Com. Rep. 232, 9 Sup. Ct. Rep. 6; Pennsylvania R. Co. v. Hughes, 191 U. S. 447, 48 L. Ed. 268, 24 Sup. Ct. Rep. 132.

"Upon the subject, Mr. Justice Brown, speaking for the court in Knapp, S., & Co. v. McCaffrey, 177 U. S. 638-642, 44 L. Ed. 921-923, 20 Sup. Ct. Rep. 824-827, said:

" 'That wherever any lien is given by a State statute for a cause of action cognizable in the admiralty, either *in rem* or *in personam*, proceedings *in rem* to enforce such liens are within the exclusive jurisdiction of the admiralty courts.

" 'But the converse of this proposition is equally true, that if a lien upon a vessel be created for a claim over which a court of admiralty has no jurisdiction in any form, such lien may be enforced in the courts of the State. Thus, as the admiralty jurisdiction does not extend *to a contract for building a vessel, or to work done or materials furnished in its construction* (People's Ferry Co. v. Beers, 20 How. 393, 15 L. Ed. 961; Roach v. Chapman, 22 How. 129, 16 L. Ed. 294), we held in Edwards v. Elliott, 21 Wall. 532, 22 L. Ed. 487, that in respect to such contracts it was competent for the States to enact such laws as their legislatures might deem just and expedient, and to provide for their enforcement *in rem.*'

> "The contract in this case being for the construction of a vessel, and its enforcement within the power and jurisdiction of the State courts, we do not think that execution of such a decree can be avoided because the vessel engaged in interstate commerce."

The above case was decided April 8, 1907, on October 22, 1906, this court decided the case of Graham & Morton Transportation Co. v. Craig Shipbuilding Co., 203 U. S. 577, wherein it was again declared that a contract for the building of, or repairs to a vessel was not maritime.

II.

MOTION TO AFFIRM.

If the motion to dismiss for want of jurisdiction is not well taken, there is sufficient color for the same to warrant the consideration and granting of the motion to affirm the judgment of the Court of Appeals of Kentucky, the Supreme Court of the State.

The rule in this respect is stated in Walston v. Nevin, 128 U. S. 578, and applies with special force to the present case. It was held there as follows:

> "When on a motion to dismiss a writ of error or an appeal for want of jurisdiction or affirm the judgment below, it appears that there is color for the motion to dismiss, and that the contention of the plaintiff in error, or the appellant *has been often pressed upon the court and as often determined adversely, the motion to affirm will be granted.*"

Other authorities to the same effect are the following:

Micas v. Williams, 104 U. S. 556.
Chanute City v. Trader, 132 U. S. 211.
Sugg v. Thornton, 132 U. S. 524.
The Alaska, 130 U. S. 201.
Sire v. Ellithorpe Air Brake Co., 137 U. S. 579.
Richardson v. Louisville, etc., R'y Co., 169 U. S. 128.

As is aptly stated in Walston v. Nevin, *supra*, all the contentions now made have often been pressed upon the attention of this court, *and have so often been determined adversely, that the law must be regarded as settled.*

III.

MOTION TO TRANSFER TO SUMMARY DOCKET.

If this court should be of the opinion that the motion to dismiss or to affirm should be refused, we respectfully urge that it be transferred for hearing to the summary docket. We ask this because of the delay the defendant in error will suffer in receiving compensation for the rebuilding of the boat in controversy should this appeal be permitted to take the regular course. The money has been due it since December, 1911, and the delay causes the defendant in error to suffer much embarrassment financially.

IV.

PENALTY FOR DELAY CAUSED BY WRIT OF ERROR SHOULD BE IMPOSED.

Sub-division 2 of Rule 23 of this court provides:

> "In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent in addition to interest, shall be awarded upon the amount of the judgment."

This rule extends to a situation where a motion to dismiss is granted.

> Deming v. Carlisle Packing Co., 226 U. S. 102, 33 Supreme Court 80.

In the case just cited, penalty for delay was imposed on a motion to dismiss under circumstances, from which it must be said that a stronger and better reason exists in favor of imposing such penalty in the case at bar.

When it is considered that this court has many, many times plainly and unequivocally decided and stated that a contract of the kind involved in this action is not maritime by nature and that a State court has jurisdiction to adjudicate controversies arising thereunder and a Federal court has no jurisdiction of such, and no color of right to a contrary claim exists, surely the situation demands the application of the delay penalty.

Respectfully submitted,

CLAUDE MERCER, Hardinsburg, Ky.
Attorney of Record for Defendant in Error.

APPENDIX.

BRECKINRIDGE CIRCUIT COURT.

CLOVERPORT FOUNDRY & MACHINE COMPANY, - *Plaintiff,*

versus

F. T. ROUNDS AND SAMUEL JESSE, - - *Defendants.*

PETITION.

The plaintiff states that it is a corporation existing under the laws of the State of Kentucky, with power and authority to make contracts and to be contracted with; to sue and to be sued by its corporate name, Cloverport Foundry & Machine Company; that it is engaged in business and has its principal place of business at Cloverport, Breckinridge County, Kentucky, and was so engaged at the times hereinafter mentioned.

Plaintiff states further that on the —— day of ——— 1911, the defendants, by contract, employed the plaintiff to repair and rebuild a steamboat which was and is the property of the defendants, then known as "The ————————Kendall," and that in pursuance of said contract the said boat was delivered into the possession of the plaintiff, at Cloverport, Ky., and thereupon the said plaintiff proceeded to comply with said contract as agreed upon for which it was agreed that the plaintiff should receive for the work, labor and materials used in repairing and rebuilding said boat the prices set forth in the itemized account filed herewith, amounting

to the sum of $5,668.65; that it was further agreed that the said amount now due would be paid upon the completion of said contract, and before the said boat was to be redelivered to the defendants.

Plaintiff states that said steamboat is now known and has been rechristened "The Golden Girl" and it is now in a seaworthy condition and the plaintiff has performed its contract in full with the defendant and has demanded of the defendant the payment of the aforesaid sum and has offered to deliver said boat into the possession of the defendants upon the payment of the said sum but plaintiff avers that the defendant has refused and still refuses to pay the aforesaid balance due on said contract.

The plaintiff states further that the boat, to-wit, The Golden Girl, is a steamboat and that the contract and services rendered have been done and complied with within less than one year before the institution of this action and that said contract was completed within less than thirty days before the institution of this action.

Plaintiff avers that it has a lien upon said steamboat, to-wit, The Golden Girl, and all its fixtures, machinery and appliances for the full amount of the aforesaid sum of $5,668.65, and that said sum is due and unpaid.

Plaintiff states further that it filed a statement in the office of the Breckinridge County Court Clerk on February 1, 1912, setting forth in the said statement, which was duly sworn to by the said plaintiff, the amount of the claim due it by said defendants and that said amount was for labor and material furnished under contract with the said defendants and claiming a lien upon said steamboat, to-wit, The Golden Girl; that an itemized statement of the work, labor and materials furnished and done, the dates thereof and the amounts by items, showing a balance of $5,668.65 to be due after deducting all just credits and set-offs to it. Said statement was properly endorsed by said Clerk and a record thereof made as required by law, and said statement is filed herewith as part hereof.

Plaintiff states further that in addition to said statement and immediately after the last item under said contract was done, to-wit, on January 31, 1912, that it caused a letter to be delivered to the said defendants, notifying them that it expected to and did claim a lien on the said steamboat, to-wit, The Golden Girl, for said debt.

Wherefore, plaintiff prays judgment against the defendants for the sum of $5,668.65 and for its cost expended; and further it prays that an order of specific attachment shall be issued and levied upon the aforesaid steamboat, to-wit, The Golden Girl, and that it be adjudged a lien on said boat for the payment of said debt, interest and cost, for a sale of said boat, and that a sufficiency of the payment thereof be applied to the payment of said debt, interest and cost, and for all proper relief.

CLAUDE MERCER,
Plaintiff's Attorney.

BRECKINRIDGE CIRCUIT COURT.

No. 3832.

CLOVERPORT FOUNDRY & MACHINE COMPANY, - *Plaintiff,*

versus

F. T. ROUNDS AND S. A. JESSE, - - - *Defendants.*

ANSWER, SET-OFF AND COUNTER-CLAIM.

Paragraph 1. The defendants for answer to the petition deny that on the —— day of ————, 1911, or at any time (except as specifically admitted in a subsequent paragraph) that they by contract, or at all, employed the plaintiff to repair or rebuild a steamboat which was and is the property of defendants then known as ———— Kendall, or that in pursuance of said contract (except as specifically admitted in a subsequent paragraph) said boat was delivered into the possession of plaintiff at Cloverport, Ky., or thereupon, or at all, plaintiff proceeded to comply with said contract as agreed upon; or that it agreed that the plaintiff should receive for the work, labor and materials used in repairing and rebuilding said boat the prices set forth in the itemized account filed herewith, amounting to the sum of $5,668.65, or any sum; or that it was further agreed, or agreed at all, that the said amount alleged to be due would be paid, or any part thereof upon the completion of said contract, or before the said boat was to be redelivered to defendants (except as hereinafter specifically admitted).

The defendants deny that the steamboat referred to in the petition and now known and rechristened The

Golden Girl is now or has been or was at any time in a seaworthy condition, or that the plaintiff performed its contract with the defendants in full or at all.

The defendants deny that the alleged services rendered by plaintiff have been done or completed within less than one year before the institution of this action, or that said alleged contract was completed within less than thirty days before the institution of this action. They deny that the plaintiff has a lien upon said steamboat, to-wit, The Golden Girl, or a lien upon all or any of its fixtures, machinery or appliances for the full amount of $5,668.65, or for any sum, or that the said sum, or any part thereof, is due or unpaid.

The defendants deny that the alleged claim filed by the plaintiff in the County Court Clerk's Office of Breckinridge County is a true or just claim, or that it correctly states the amount for labor and material under the alleged contract with defendants, or that plaintiff has any lien upon said steamboat, to-wit, The Golden Girl. They deny that the items in the account alleged to be filed with the petition (no account is filed with the petition) show a balance of $5,668.65, or any sum, to be due after deducting all just credits and set-offs to it. They deny that they have knowledge or information upon which to form a belief that the said alleged statement was properly, or at all, endorsed by the clerk, or that a record thereof was made as required by law.

Paragraph 2. For further answer to the petition the defendants deny that the claim against them for the sum of $5,668.65, or any part of it, is for labor or materials furnished them upon their request and agreement upon a steamboat named The Golden Girl during the year 1911 and 1912, at Cloverport, Breckinridge County, Ky., except as hereinafter specifically admitted, or that defendants agreed to pay same, or any part thereof, as soon as the work was done, or that the work has been done as per contract, or at all; or that the plaintiff has a lien upon said boat. They deny that said claim is just or that the plaintiff ought to recover thereon the said

sum of $5,668.65, or any part thereof. They deny that plaintiff believed or had any grounds to believe unless restrained by orders of the court that the said steamboat would be removed from the State or that plaintiff has a lien upon said steamboat for the payment of the claim set up in the petition, or any part thereof.

Paragraph 3. Defendants deny (except as specifically admitted in a subsequent paragraph) that plaintiff sold, delivered or furnished to it, or that it agreed or promised to pay for any one of the items set up in the account alleged to be filed with the petition. They deny that plaintiff sold or delivered to them March 30, 1911, 30′ #1 pine $1.05, or that said pine was worth $1.05 or any sum; they deny that on March 30, 1911, plaintiff sold, delivered or furnished to them 20′ #1 oak .75, or that same was worth that or any sum; they deny that they are indebted to the plaintiff for towing barge to Tell City, April 5, 1911, 3.00, or any sum; they deny that they are indebted to the plaintiff for miscellaneous labor, April 8, or any labor, 14.75, or that plaintiff sold them April 22, 1911, 528′ select pine sills 6 x 12 at $35. m, or any select pine sills, 18.48, or any other sum; they deny that plaintiff sold or delivered to them May 10, 1911, 591′ blocking at 12.50 m, or any blocking, 7.40, or that the same was worth that or any sum; they deny that plaintiff sold them May 11, 1911, or at any time, 770′ bottom oak at 30.00 m, or any oak, 23.10, or any sum, or that the same was worth that or any other sum; they deny that plaintiff sold or delivered to them on May 18, 1911, or at any time, 60′ #1 oak 1-10 x 12-6 at 30.00 m, or any #1 oak, 1.80; they deny that on May 31, 1911, or at any time, plaintiff sold or delivered them 486′ #1 bottom oak at 35.00 m, or any bottom oak, 17.01; they deny that on June 7, 1911, plaintiff sold or delivered to them 300′ dimension oak at 20.00 m, or any dimension oak, 6.00, or any sum; they deny that on June 7, 1911, plaintiff sold or delivered to them 635′ dimension oak at 35.00 m, or any dimension oak, 22.22, or any sum; they deny that on June 12, 1911, or at any

time, plaintiff sold or delivered to them 2297′ #1 oak at 35.00 m, or any #1 oak, 80.40, or any sum; they deny that on June 14, 1911, or at any time, plaintiff sold or delivered to them 476′ #1 oak at 35.00 m, or any #1 oak, 16.66, or any sum; they deny that on June 14, 1911, plaintiff sold or delivered to them 370′ oak at 20.00 m, or any oak, 7.40, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 5529′ select oak at 38.00 m, or any select oak 210.00, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 512′ #1 oak at 28.00 m, or any #1 oak, 14.34, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 400# boat spikes, or any boat spikes, 14.00, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 300# nails, or any nails, 9.00, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold and delivered to them 155 ⅝ x 3½ mch bolts, or any mch bolts, 3.25, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 150 ½ x 12 carriage bolts, or any carriage bolts, 3.25, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 150 ⅜ x 6½ carriage bolts, or any carriage bolts, 1.50, or any sum; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 600 ½ x 6½ carriage bolts, or any carriage bolts, 7.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 150 ½ x 9 carriage bolts, or any carriage bolts, 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 150 ½ x 14 carriage bolts, or any carriage bolts, 3.40, or that the same was worth that or any sum, or that the price charged is a reasonable

one, or that they agreed to pay same or any part thereof; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 10# wrought washers, or any wrought washers, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 3# ⅜ washers, or any ⅜ washers, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 10, 1911, or at any time, plaintiff sold or delivered to them 7 bales oakum, or any oakum, 28.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 10, 1911, or at any time, they became indebted to plaintiff for drayage to date, or any drayage, 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 11, 1911, or at any time, they became indebted to the plaintiff for hauling lumber 9.52, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 12, 1911, or at any time, they became indebted to the plaintiff for hauling lumber 3.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 13, 1911, or at any time, they became indebted to the plaintiff for hauling lumber .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 19, 1911, or at any time, plaintiff sold or delivered to them 1 keg ¼ x 5 boat spikes, or any boat spikes, 6.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they

deny that on July 19, 1911, or at any time, plaintiff sold or delivered to them 6 bales oakum, or any oakum, 24.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 19, 1911, or at any time, plaintiff sold or delivered to them 50# spun cotton, or any cotton, 10.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 24, 1911, or at any time, plaintiff sold or delivered to them 50# red lead, or any lead, 4.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 24, 1911, or at any time, plaintiff sold or delivered to them 2 gal linseed oil, or any oil, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 26, 1911, or at any time, plaintiff sold or delivered them 5 1 x 19 drift bolts, or any drift bolts, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 26, 1911, or at any time, plaintiff sold or delivered to them 5 gal linseed oil, or any linseed oil, 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 26, 1911, or at any time, they became indebted to the plaintiff for drayage on lumber 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 27, 1911, or at any time, they became indebted to the plaintiff for drayage on lumber 4.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 31, 1911, or at any time, plaintiff sold or delivered to them 5 ½ x 18 carriage

bolts, or any carriage bolts, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 31, 1911, or at any time, plaintiff sold or delivered to them 3 drift bolts, or any bolts, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 31, 1911, or any time, plaintiff sold or delivered to them 1 ⅜ x 20 carriage bolts, or any carriage bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 31, 1911, or at any time, plaintiff sold or delivered to them 1 ½ x 20 carriage bolts, or any carriage bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on July 31, 1911, or at any time, plaintiff sold and delivered to them 1 keg 5″ boat spikes, or any boat spikes, 6.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 2, 1911, or at any time, plaintiff sold or delivered to them 5 pcs pine 5¼ x 8¼ 34 at 35.00 m, or any pine, 21.53, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 7, 1911, or at any time, plaintiff sold or delivered to them 175# white lead at 8¼, or any lead, 14.44, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 7, 1911, or at any time, plaintiff sold or delivered to them 120′ #1 pine sills at 37.50 m, or any pine sills, 4.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 7, 1911, or at any time, plaintiff

sold or delivered to them 2835′ oak 100.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 8, 1911, or at any time, plaintiff sold or delivered to them 8 5/8 x 3½ carriage bolts, or any carriage bolts, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 8, 1911, or at any time, plaintiff sold or delivered to them 2 2″ flanges, or any flanges, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 8, 1911, or at any time, plaintiff sold or delivered to them ¾# packing, or any packing, .45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 8, 1911, or at any time, plaintiff sold or delivered to them 8 ½ x 3½ carriage bolts, or any carriage bolts, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 8, 1911, or at any time, plaintiff sold or delivered to them 1 8″ floor flange, or any floor flange, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 9, 1911, or at any time, plaintiff sold or delivered to them 4½′ 8″ pipe for ask well, or any pipe, 6.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 9, 1911, or at any time, plaintiff sold or delivered to them bow plates 2.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 11, 1911, or at any time, they became indebted to plaintiff for drayage 1.00, or that the same was worth

that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 11, 1911, or at any time, plaintiff sold or delivered to them Ties 4.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 15, 1911, or at any time, plaintiff sold or delivered to them 288 select pine sills, or any pine sills, 12.96, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 15, 1911, or at any time, they became indebted to plaintiff for freight and drayage 1.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 16, 1911, plaintiff sold or delivered to them 1 ¾ x 9 machine bolts, or any machine bolts, .08, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 16, 1911, or at any time, plaintiff sold or delivered to them 2 ¾ x 14 eye bolts, or any eye bolts, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 16, 1911, or at any time, they became indebted to plaintiff for work on chain 5.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 18, 1911, or at any time, they became indebted to plaintiff for Drayage 4.35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 20, 1911, or at any time, plaintiff sold or delivered to them nails 1.19, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any

part thereof; they deny that on August 22, 1911, or at any time, they became indebted to the plaintiff for nails and labor 2.13, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 24, 1911, or at any time, plaintiff sold or delivered to them 1 bbl pitch, or any pitch, 2.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 25, 1911, or at any time, they became indebted to plaintiff for drayage 2.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 25, 1911, or at any time, plaintiff sold or delivered to them 4560′ select Y. P. decking at 33.00 m, or any decking, 150.48, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 25, 1911, or at any time, plaintiff sold or delivered to them 600′ pine 20 2 x 10 18 at 28.00 m, or any pine, 16.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 25, 1911, or at any time, plaintiff sold or delivered to them 427′ pine 16 2 x 10 16 at 28.00 m, or any pine, 11.96, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 25, 1911, or at any time, plaintiff sold or delivered to them 192′ oak 3 16 x 8 16 at 25.00 m, or any oak, 4.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 25, 1911, or at any time, plaintiff sold or delivered to them 72′ oak 1 6 x 6 18 at 25.00 m, or any oak, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any

part theerof; they deny that on August 25, 1911, or at any time, they become indebted to plaintiff for drayage on lumber 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 28, 1911, or at any time, plaintiff sold or delivered to them 10 ¾ x 24 bolts, or any bolts, 1.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 28, 1911, or at any time, plaintiff sold or delivered to them 20 ¾ cast washers, or any cast washers, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on August 29, 1911, or at any time, plaintiff sold or delivered to them 2 large bolts, or any bolts, .65, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 1, 1911, or at any time, plaintiff sold or delivered to them 30# nails, or any nails, .90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 2, 1911, or at any time, plaintiff sold or delivered them 840′ select poplar 4 6 x 10 42 at 65.00, or any poplar, 54.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 6, 1911, or at any time, they became indebted to plaintiff for 6 hours planing mill work, or any planing mill work, 4.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 9, 1911, or at any time, plaintiff sold or delivered to them 20# nails, or any nails, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that

on Sept. 9, 1911, or at any time, they became indebted to plaintiff for drayage 1.45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 11, 1911, plaintiff sold or delivered to them 1132′ select Y. P. at 35.00 m, or any select Y. P., 41.72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 11, 1911, or at any time, plaintiff sold or delivered to them 288′ #1 Y. P. 6 2 x 12 24 at 33.00, or any #1 Y. P., 9.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 11, 1911, or at any time, plaintiff sold or delivered to them 672′ #1 pine 21 2 x 8 24 at 31.00, or any #1 pine, 20.83, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 11, 1911, or at any time, plaintiff sold or delivered to them 459′ #1 pine 12 & 16 at 30.00 m, or any #1 pine, 13.77, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 11, 1911, or at any time, they became indebted to plaintiff for drayage 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 12, 1911, or at any time, plaintiff sold or delivered to them 21# nails, or any nails, .63, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 12, 1911, or at any time, plaintiff sold or delivered to them 20 ¾ x 4 mch bolts, or any mch bolts, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that Sept. 12, 1911, or at any time

plaintiff sold or delivered to them 5 5/8 x 30 mch bolts, or any mch bolts, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 12, 1911, or at any time, plaintiff sold or delivered to them 6 5/8 x 32 mch bolts, or any mch bolts, .90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 12, 1911, or any time, plaintiff sold or delivered to them 192′ #1 pine 4 x 12 at 22.50, or any #1 pine, 4.32, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 12, 1911, or at any time, they became indebted to plaintiff for drayage .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 13, 1911, or at any time, plaintiff sold or delivered to them 28# nails, or any nails, .84, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 13, 1911, or at any time, they became indebted to plaintiff for drayage .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part theerof; they deny that on Sept. 15, 1911, or at any time, plaintiff sold or delivered to them 256′ pine 8 2 x 8 24 at 31.00 m, or any pine, 7.94, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 15, 1911, or at any time, plaintiff sold or delivered to them 192′ #1 oak 2 6 x 12 16 at 36.00 or any #1 oak, 6.72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 15, 1911, or at any time, plaintiff sold or delivered to them 144′ pine

3 2 x 12 24 at 33.00 m, or any pine, 4.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 19, 1911, or at any time, plaintiff sold or delivered to them 30# casing nails, or any casing nails, .98, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 19, 1911, or at any time, they became indebted to plaintiff for drayage on lumber, or any drayage, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 19, 1911, or at any time, plaintiff sold or delivered to them 2½ gallons linseed oil, or any linseed oil, 2.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 19, 1911, or at any time, plaintiff sold or delivered to them 2 4″ paint brushes, or any paint brushes, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold or delivered to them 107′ 20 2 x 2 16 #1 Y. P. at 25.00, or any #1 Y. P. 2.77, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold or delivered to them 90′ 30 1½ x 1½ 16 Y. P. at 30.00 m, or any Y. P., 2.70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold or delivered to them 30′ 1 3 x 5 24 pine at 30.00, or any pine, .90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold

or delivered to them 21′ 2 3 x 3 14 pine at 28.00 m, or any pine, .58, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold or delivered to them 320′ selected Y. P. 5 3½ x 10 22 at $37.50, or any Y. P., 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold or delivered to them 171′ #1 pine 19 1½ x 6 12 at 30.00, or any #1 pine, 5.13, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold or delivered to them 160′ pine 21 1½ x 4 16 at $30.00, or any pine, 4.80, or that the same was worth that or any sum or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, plaintiff sold or delivered to them 211′ dimension Y. P. at 35.00, or any Y. P., 7.59, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, they became indebted to plaintiff for drayage .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, they became indebted to the plaintiff for planing mill work 6.00 or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 20, 1911, or at any time, they became indebted to plaintiff for Planing Mill Work 2.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 21, 1911, or at any time, plaintiff

sold or delivered to them 38# casing nails, or any casing nails, 1.24, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 21, 1911, or at any time, plaintiff sold or delivered to them 68′ 2 4½ x 7½ 12 #1 oak at 30.00, or any #1 oak, 2.04, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 21, 1911, or at any time, plaintiff sold or delivered to them 330′ #1 S. C. Y. P. flooring at 27.00, or any flooring, 8.91, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 21, 1911, or at any time, plaintiff sold or delivered to them 1375′ select Y. P. dimension stock at 35.00, or any select Y. P. dimension stock, 48.12, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 21, 1911, or at any time, they became indebted to plaintiff for drayage 3.55, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 22, 1911, or at any time, they became indebted to plaintiff for Planing Mill Work 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 22, 1911, or at any time, plaintiff sold or delivered to them 48′ 1 2 x 12 24 select pine at 33.00, or any select pine, 1.58, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 23, 1911, or at any time, they became indebted to plaintiff for drayage .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 25, 1911,

or at any time, plaintiff sold or delivered to them 4½# casing nails, or any casing nails, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 25, 1911, or at any time, plaintiff sold or delivered to them 3600′ select dry oak 4/4 at 30.00, or any select dry oak, 108.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 25, 1911, or at any time, they became indebted to plaintiff for labor and mch use manufacturing same 37.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 25, 1911, or at any time, plaintiff sold or delivered to them 288′ 6 2 x 12 24 select pine at 33.00, or any select pine, 9.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 25, 1911, or at any time, plaintiff sold or delivered to them 252′ L.′ ¼ round 1.89, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 27, 1911, or at any other time, plaintiff sold or delivered to them 1 keg 6d nails, or any nails, 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 27, 1911, or at any time, plaintiff sold or delivered to them 288′ 6 2 x 12 24 select pine at 33.00, or any pine, 9.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 27, 1911, or at any time, plaintiff sold or delivered to them 71′ ⅞ x 6 #1 dressed poplar at 50.00, or any poplar, 3.55, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part

thereof; they deny that on Sept. 27, 1911, or at any time, plaintiff sold or delivered 1528′ #1 B. D. 1 E. C. flooring at 30.00, or any flooring, 45.84, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 27, 1911, or at any time, plaintiff sold or delivered to them 1172′ #1 B. D. 1 E. C. flooring at 30.00, or any flooring, 35.16, or that the same was worth that or any sum, or that the price charged is a reasonable one or that they agreed to pay same or any part thereof; they deny that on Sept. 27, 1911, or at any time, plaintiff sold or delivered to them 10# 4d nails, or any nails, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 28, 1911, or at any time, plaintiff sold or delivered to them 384′ 8 2 x 12 24 select pine at 33.00, or any pine, 12.67, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Sept. 28, 1911, or at any time, they became indebted to plaintiff for 4 hrs planing mill work, or any planing mill work, 4.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 2, 1911, or at any time, plaintiff sold or delivered to them 451′ #1 B. D. 1 E. & C. flooring at 30.00, or any flooring, 13.53, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 3, 1911, or any time, plaintiff sold or delivered to them 420′ select Y. P. flooring at 30.00, or any flooring, 12.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof they deny that on Oct. 3, 1911, or at any time, plaintiff sold or delivered to them 230′ #1 poplar at 40.00, or any poplar, 9.20, or that the same was worth that or any sum, or that the price charged is a

reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 3, 1911, or at any time, plaintiff sold or delivered to them 8 sq Crusader roofing at 1.85, or any roofing, 14.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 3, 1911, or at any time, they became indebted to plaintiff for a Tax .35, or that the same amounted to that or any sum, or that the amount charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 10# nails, or any nails, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, they became indebted to plaintiff for drayage 1.35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 430′ select ⅜ sealing at 24.00, or any sealing, 10.32, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 1270′ #1 ½ sealing at 22.00, or any sealing, 27.94, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 72′ 24″ panel poplar at 75.00, or any poplar, 5.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 48′ 1 2 x 12 24 select pine at 33.00, or any pine, 1.58, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they

agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 25′ 6 2½ x 2½ 8 oak at 20.00, or any oak, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 214′ select rough poplar at 40.00, or any poplar, 8.56, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 4, 1911, or at any time, plaintiff sold or delivered to them 28 12 x 16 7/8 sash, 6 10 x 16 7/8 sash, 8 10 x 12 9 L. T. sash, 6 10 x 12 8 L. T. windows, 9 2 6 x 6 6 4 L. T. doors, 2 3 x 6 6 4 L. T. special doors, 2 closet slat doors 2 6 x 5, 26 2 6 x 10 2 L. T. transom making 98.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 6, 1911, or at any time, plaintiff sold or delivered to them 130′ 1″ pipe, or any pipe, 7.80, or that the same was worth that or sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 6, 1911, or at any time, plaintiff sold or delivered to them 6# packing, or any packing, 3.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 6, 1911, or at any time, plaintiff sold or delivered to them 1# asbestos wick .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 6, 1911, or at any time, plaintiff sold or delivered to them 1# joint cement .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 6, 1911, or at any time, plaintiff sold or delivered to them 306′ select dim pine for Mast poles at 50.00, or any pine,

15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 6, 1911, or at any time, plaintiff sold or delivered to them 392′ ¼ & ½ round at ¾c, 4.44, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 7, 1911, or at any time, plaintiff sold or delivered to them 633′ ⅓ select Y. P. flooring at 30.00, or any flooring, 19.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 7, 1911, or at any time, they became indebted to plaintiff for Drayage 1.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 7, 1911, or at any time, plaintiff sold or delivered to them 40# lead, or any lead, 3.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 7, 1911, or at any time, plaintiff sold or delivered to them 4½ gal linseed oil, or any linseed oil, 4.73, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 7, 1911, or at any time, plaintiff sold or delivered to them 1½ gal O. S. white paint, or any white paint, 2.85, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 7, 1911, or at any time, they became indebted to plaintiff for Planing Mill Work 2.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 7, 1911, or at any time, plaintiff sold or delivered to them Braids, .75, or that the same was worth that or any sum, or that the price charged is a reasonable

one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 20 ⅜ x 7 rods, or any rods, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 2 paint brushes, or any paint brushes, 1.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 1 varnish brush 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 10# nails, or any nails, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, they became indebted to plaintiff for extra labor, or any labor, 2.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 40# white lead, or any white lead, 3.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 50# white ochre, or any white ochre, 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 1½ gal Turpentine or any Turpentine, 1.35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct.

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9, 1911, or at any time, plaintiff, sold or delivered 1½ gal Linseed Oil, or any linseed oil, 1.63, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 2# drop black, or any drop black, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 9, 1911, or at any time, plaintiff sold or delivered to them 1qt Japan, or any Japan, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 10, 1911, or at any time, plaintiff sold or delivered to them 1 pt Turpentine, or any Turpentine, .11, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 10, 1911, or at any time, plaintiff sold or delivered to them 1pt Linseed, or any Linseed, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or delivered to them 2 gal Index O. S. white, or any Index O. S. white, 3.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or delivered to them 1 qt Linseed, or any Linseed, .27, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or delivered to them 1 qt Japan, or any Japan, .23, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or de-

livered to them 10# casing nails, or any casing nails, .33, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or delivered to them 107′ select Y. P. flooring at 30.00, or any flooring, 3.51, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or delivered to them 402′ select B. flooring at 30.00, or any flooring, 12.06, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or delivered to them 880′ #1 ½″ sealing at 22.00, or any sealing, 19.36, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, they became indebted to plaintiff for Planing Mill work 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 11, 1911, or at any time, plaintiff sold or delivered to them 2 double strength pipe nipples, or any pipe nipples, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 3 ½ nipples, or any nipples, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 3¾″ plugs, or any plugs, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 2 ½″

plugs or any plugs, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 1 1½ by 6 nipples, or any nipples .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time plaintiff sold or delivered to them 1 2 x 7 nipples, or any nipples, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 1 brass packing ring .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 1 set collar .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 1 valve stem 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, they became indebted to plaintiff for Planing Mill work 4.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, they became indebted to plaintiff for Drill work .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 5 ⅜ bolts, or any bolts, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part

thereof; they deny that on Oct. 12, 1911, or at any time, plaintiff sold or delivered to them 1 ⅞ bolt .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, they became indebted to plaintiff for 4 hrs. machine work on strap, or any machine work on strap, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 12, 1911, or at any time, they became indebted to plaintiff for ½ hrs machine work on plate, or any machine work, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 13, 1911, or at any time, plaintiff sold or delivered to them 48′ 2 x 12 24 select pine at 33.00, or any select pine, 1.58, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 13, 1911, or at any time, plaintiff sold or delivered to them 652′ ¾ and ½ ¼ round ¾c 4.89, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 13, 1911, or at any time, plaintiff sold or delivered to them 450′ #1 rough poplar at 25.00, or any rough poplar, 11.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 13, 1911, or at any time, plaintiff sold or delivered to them 65′ #1 oak at 30.00, or any #1 oak, 1.95, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 13, 1911, or at any time, plaintiff sold or delivered to them 1 wheel pillar block 2.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any

part thereof; they deny that on Oct. 14, 1911, or at any time, plaintiff sold or delivered to them 8# babbit metal, or any babbit metal, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 14, 1911, or at any time, they became indebted to plaintiff for 7 hrs machine work, or any machine work, 4.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 14, 1911, or at any time, they became indebted to plaintiff for dressing lumber .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 15# nails, or any nails, .45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 5 gal. linseed oil, or any linseed oil, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 1 gal. Turpentine, or any Turpentine, .90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 1 gal. Eagle O. S. white, or any Eagle O. S. white, 1.70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 50# white lead, or any white lead, 4.13, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911,

or at any time, plaintiff sold or delivered to them 10# French whitening, or any French whitening, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, they became indebted to plaintiff for 10 hrs mch work, or any mch work, 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 2 ½ x 13 bolts, or any bolts, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 4 1½ x 23 bolts, or any bolts, 1.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 2 ⅞ x 22½ bolts, or any bolts, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 17, 1911, or at any time, plaintiff sold or delivered to them 2 ⅝ stirrup bolts, or any stirrup bolts, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them 2 1 x 5″ bolts, or any bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them 9 ½ Truss bolts, or any Truss bolts, 6.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them

4 ¾ x 14" bolts, or any bolts, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them 12 ⅝ x 4" bolts, or any bolts, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them 8 ½ x 2½" bolts, or any bolts, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, they became indebted to plaintiff for 5 hrs machine work, or any machine work, 2.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them 2 ½ x 1½" set screws, or any set screws, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them 3 ⅜ plugs, or any plugs, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 18, 1911, or at any time, plaintiff sold or delivered to them 1 ⅝ x 1½ set screws, or any set screws, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, or at any time, plaintiff sold or delivered to them 275# sheet iron, or any sheet iron, 7.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, they became indebted to plaintiff for 10 hrs machine work, or any machine work, 5.00, or that the same was

worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, they became indebted to plaintiff for work on stirrup 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 3 bars of steel, or any steel 1.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 2 bars ⅝ steel, or any steel, .84, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 2 ¾ turn buckles, or any turn buckles, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 8 ¾ x 9 bolts, or any bolts, .55, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 3 ⅝ x 12 bolts, or any bolts, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 1 ⅝ x 6 bolts, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 3# rivets, or any rivets, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part

thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 3# cup washers, or any cup washers, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ ell .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or del'd to them 1 2¼ ell .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 1 ¾ nipple .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 1 ½" nipple .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 1 ⅜ nipple, or any nipple, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 280' oak at 18.00, or any oak, 5.04, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 19, 1911, or at any time, plaintiff sold or delivered to them 240' 5 2 x 12 24 select pine at 33.00, or any select pine, 7.92, or that the same was worth that or any sum,

or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 240′ 1st & 2d oak for stairs 45.00, or any oak for stairs, 11.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 394′ oak for fenders 20.00, or any oak fenders, 7.88, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 2# rivets, or any rivets, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 23 ½ x 3 carriage bolts, or any carriage bolts, .69, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 4# cup washers, or any cup washers, .24, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 6 ½ x 9 carriage bolts, or any carriage bolts, 1.18, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 3 ¾ x 10 bolts, or any bolts, .16, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 7# steel, or any steel, .21, or that the same was worth that or any sum, or that the price

charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, they became indebted to plaintiff for Drayage 4.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 21, 1911, or at any time, plaintiff sold or delivered to them 17 Sq-rs Crusade roofing at 1.85, or any Crusade roofing, 31.45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 24, 1911, or at any time, plaintiff sold or delivered to them 219′ #1 ½ sealing at 22.00, or any sealing, 4.82, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 24, 1911, or at any time, plaintiff sold or delivered to them 10 2 6 x 6 6 transoms, or any transoms, 6.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 24, 1911, or at any time, plaintiff sold or delivered to them 25# ochre, or any ochre, 1.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 24, 1911, or at any time, plaintiff sold or delivered to them 2 gal Sile wood filler, or any wood filler, 2.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 24, 1911, or at any time, plaintiff sold or delivered to them ½ gal Turpentine, or any Turpentine, .45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 24, 1911, or at any time, plaintiff sold or delivered to them Sand paper .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they

deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 4 Doz. #12 screws, or any screws, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 5 ⅝ rods, or any rods, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or del'd to them 25# 1 x ¾ Iron, or any Iron, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 8 ⅝ nuts, or any nuts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them ¼ coil ½ rope, or any rope, 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 3 Doz sash lifts, or any sash lifts, 1.00 or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or del'd to them 1 bar 2 x 2 x 5¼ angle line, or any angle line, 1.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 5 sheets of iron, or any iron, 8.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 10# Boiler rivets, or any boiler rivets, .60,

or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 24 4″ pulleys, or any pulleys, 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 24 6″ cleats, or any cleats, 1.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or del'd to them 36 prs transom buts, or any transom buts, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 18″ loose pins buts, or any loose pins buts, .90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 1 Doz latches, or any latches, 2.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 1 Doz knobs, or any knobs, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 1 Gross #8 screws, or any screws, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 27, 1911, or at any time, plaintiff sold or delivered to them 20 strap bolts, or any strap bolts, 1.00, or that the same was worth that or any sum, or that the price charged is

a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, they became indebted to plaintiff for Drayage .35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or del'd to them 90# lead, or any lead, 7.23, or that the same was worth that or any sum, or that the price charged was is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 1½ gal Turpentine, or any Turpentine, 1.35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 1 gal linseed, or any linseed, 1.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 1 qt Japan, or any Japan, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 2 gal. I. S. Index white, or any I. S. Index white, 3.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 65# wheel braces, or any wheel braces, 15.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 8 Indian hub plates, or any hub plates, 8.68, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct.

28, 1911, or at any time, plaintiff sold or delivered to them 3 cylinder bed plates, or any bed plates, 7.87, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 1¾ turn buckle, or any turn buckle, .35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 11′ ¾ rod, or any rod, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 4 ⅝ x 37 bolts, or any bolts, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 3 ½ x 12 truss rods, or any truss rods, 2.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 1 gal index I. S. white, or any index I. S. white, 1.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or del'd to them ½ gal linseed, or any linseed, .55, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 706′ ½″ ¼ rods, or any rods, 5.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 6 gal index gray, or any index

gray, 11.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or del'd to them 46# white lead, or any white lead, 3.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 28, 1911, or at any time, plaintiff sold or delivered to them 1 gal linseed, or any linseed, 1.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, plaintiff sold or delivered to them 2 gal Turpentine, or any Turpentine, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, plaintiff sold or del'd to them 416′ select poplar at 40.00, or any select poplar 16.64, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, plaintiff sold or delivered to them 100′ oak at 20.00, or any oak, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, plaintiff sold or delivered to them 427′ 20 2 x 8 16 #1 pine 25.00, or any #1 pine, 10.67, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, plaintiff sold or delivered to them 400′ ½ x 6 x 2 balusters 8c, or any balusters, 32.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, plaintiff sold or delivered to them 640′ D. 2 S. B. D. 1 c & c b & b sealing at 28.00, or any sealing, 17.92, or that the same was

worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, plaintiff sold or delivered to them 5# Rivets, or any Rivets, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Oct. 31, 1911, or at any time, they became indebted to plaintiff for 3 hrs planing work, or any planing work, 1.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 1, 1911, or at any time, plaintiff sold or delivered to them 10# Brads, or any Brads, .80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 1, 1911, or at any time, plaintiff sold or delivered to them 8# 8d casing nails or any casing nails, .26, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 2, 1911, or at any time, plaintiff sold or delivered to them 4 gal O. S. white, or any O. S. white, 7.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 2, 1911, or at any time, plaintiff sold or delivered to them 5# 3d nails, or any nails, .16, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same, or any part thereof; they deny that on Nov. 2, 1911, or at any time, they became indebted to plaintiff for Machine labor 5.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 2, 1911, or at any time, they became indebted to plaintiff for Drayage, .35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that

on Nov. 2, 1911, or at any time, plaintiff sold or delivered to them 324′ ¼ round ¾c, 2.57, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 2, 1911, or at any time, plaintiff sold or delivered to them 96′ 2 2 x 12 24 #1 pine at 33.00, or any #1 pine, 3.17, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 2, 1911, or at any time, plaintiff sold or delivered to them 64′ 2 2 x 8 24 pine 31.00, or any pine, 1.98, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 2, 1911, or at any time, plaintiff sold or delivered to them 38′ select oak 40.00, or any select oak, 1.52, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 2, 1911, or at any time, plaintiff sold or delivered to them 250 ½ x 5″ bolts, or any bolts, 3.85, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 3, 1911, or at any time, plaintiff sold or delivered to them 375′ #1¾ D2s B. C. sealing, or any sealing, 10.87, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 3, 1911, or at any time, plaintiff sold or delivered to them 1 gal Coach Japan, or any Coach Japan, 1.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 3, 1911, or at any time, plaintiff sold or delivered to them 4 gal linseed, or any linseed, 4.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 3, 1911, or at any time, plaintiff sold or del'd to

them 2 gal Turpentine, or any Turpentine, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 3, 1911, or at any time, plaintiff sold or delivered to them 85# white lead, or any white lead, 7.01, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 3, 1911, or at any time, plaintiff sold or delivered to them 20# nails, or any nails, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 3, 1911, or at any time, they became indebted to plaintiff for Planing Mill and machine work 2.55, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 4, 1911, or at any time, plaintiff sold or delivered to them Sand paper, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 4, 1911, or at any time, plaintiff sold or delivered to them Varnish brush .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 4, 1911, or at any time, plaintiff sold or delivered to them Rubber waste. .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 4, 1911, or at any time, plaintiff sold or delivered to them 1 gal gasoline, or any gasoline, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 4, 1911, or at any time, they became indebted to plaintiff for Drayage 6.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any

part thereof; they deny that on Nov. 4, 1911, or at any time, plaintiff sold or delivered to them ½ boiler front 8.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 6, 1911, or at any time, plaintiff sold or delivered to them 100# white lead, or any white lead, 8.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 6, 1911, or at any time plaintiff sold or del'd to them 6 gal O. S. white, or any O. S. white, 11.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 6, 1911, or at any time plaintiff sold or delivered to them 12½# Putty, .63, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 6, 1911, or at any time, plaintiff sold or delivered to them 5 gal linseed or any linseed, 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 6, 1911, or at any time, plaintiff sold or delivered to them 2 sacks of cement, or any cement, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 6, 1911, or at any time, plaintiff sold or delivered to them 940′ D2S Bd lenc B & B sealing at 28.00, or any sealing, 26.32, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 6, 1911, or at any time, plaintiff sold or delivered to them 148′ oak strips, or any oak strips, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, plaintiff sold or delivered to them 6 pair hinges,

or any hinges, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughan 1483 hrs at 25c 370.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Fred May 1380½ hrs at 20c 276.05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 1138 hrs at 17½c 199.15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor D. McFarland 229 hrs at 15c 34.35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor W. V. Perkins 10 hrs at 30c 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Jim Pleasant 141 hrs. at 15c 21.15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Tom Faith 16 hrs at 30c 4.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Ernast Pate 16 hrs at 20c 3.20, or that the same

was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Bradley Coombs 16 hrs at 15c 2.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Geo Riddle (Ship Car) 417 hrs at 35c 145.95, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Henry Pearson 1035 hrs at 35c 362.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Phil Pettit 1143 hrs at 30c 342.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Jim Polk 501 hrs at 15c 75.15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Henry Garrett 99 hrs at 15c 14.85, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Hiram Moorman 18 hrs at 15c 2.70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Peyton Scott 154 hrs at 20c 30.80, or that the same was worth

that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time they became indebted to plaintiff for labor Fletcher Pauley 366 hrs at 20c 73.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Eugene Kinsberry 276 hrs at 30c 82.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Ed Daugherty 159 hrs at 20c 31.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Tom Ellis 145 hrs at 20c 29.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Emmett Mattingly (Painter) 50¼ hrs at 30c 15.15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor W. L. McCracken (Painter) 74 hrs at 30c 22.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to the plaintiff for labor H. C. Pate (Painter) 68 hrs at 25c 17.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 7, 1911, or at any time, they became indebted to plaintiff for labor Joe Sawyer (Painter) 60 hrs at 30c 18.00, or that the

same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 10, 1911, or at any time, they became indebted to plaintiff for labor Phil Pettit (balance) 65 hrs at 30c 19.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 10, 1911, or at any time, they became indebted to plaintiff for Drayage .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor H. Pearson 70 hrs at 35c 24.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or del'd to them 1 gal Gasoline, or any Gasoline, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 8′ 2 x 1½ iron, or any iron, .84, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 12′ ¾ steel, or any steel, .54, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 3 ½ bolts, or any bolts, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 1 ⅝ bolts, or any bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay

same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for 1 hr machine work, or any machine work, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 8 ½ x ¾ inch bolts, or any bolts, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 1 ⅞ x 3 mch bolts, or any mch bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 3 ½ x 5½ bolts, or any bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 6 ½ cup washers, or any washers, .36, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 4 ½ engine bolts, or any engine bolts, 1.95, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 28 1 x 24 ½ mch bolts, or any mch bolts, 7.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, plaintiff sold or delivered to them 2 anchor straps, or any anchor straps, .80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11,

1911, or at any time, plaintiff sold or delivered to them 16 1 cup washers, or any cup washers, .86, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for 2 days on smoke stack, or any days, 8.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughn 60 hrs at 25c 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor Fred May 60 hrs at 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 60 hrs at 17½c, 10.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 60 hrs at 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor Eugene Kingsbury, 60 hrs at 30c 18.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor Ed Daugherty 10 hrs at 20c 2.00, or that the same is worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at

any time, they became indebted to plaintiff for Drayage .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor W. L. McCracken Painter 60 hrs 30c, 18.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 11, 1911, or at any time, they became indebted to plaintiff for labor Joe Sawyer Painter 60 hrs 30c 18.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 15, 1911, or at any time, plaintiff sold or delivered to them 4 1 x 5′ 6½″ bolts, or any bolts, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 15, 1911, or at any time, plaintiff sold or delivered to them 4 1 x 5 x 3½ bolts, or any bolts, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 17, 1911, or at any time, plaintiff sold or delivered to them 4 1 x 5/7 mch bolts, or any bolts, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 17, 1911, or at any time, plaintiff sold or delivered to them 2 1 x 5 mch bolts, or any bolts, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 20 ¾ x 2½ mch bolts, or any mch bolts, 2.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 20′ ½ round .20, or that the

same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 2 gal Turpentine, or any Turpentine, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 2 6 x 6 6 White Pine doors, or any doors, 2.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 147′ #1 flooring, or any flooring, 4.41, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 1 2 x 6 door, or any door, 1.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or del'd to them 1 Paint brush, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them Sand paper, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same, or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 32′ select oak at 40.00 m, or any select oak, 1.28, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 121′ select poplar at 40.00, or any select poplar, 4.84, or that the same was worth that or any sum, or that the price charged is a reasonable one,

or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 88′ panel poplar at 75.00, or any panel poplar, 6.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them Nails, .16, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 2# white rubber waste, or any rubber waste, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or del'd to them Nails .45, or that the same was worth that or any sum or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 4 gal silo wood filler, or any wood filler, 5.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 1 varnish brush 1.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 100# white lead, or any white lead, 8.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 7 gal Index silver gray, or any index silver gray, 13.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911,

or at any time, plaintiff sold or delivered to them 1 gal Eagle gray or any Eagle gray, 1.70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 1 gal Index red, or any Index red, 1.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them ½ gal Index green or any Index green, 1.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 5 gal linseed or any linseed 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 2 gal Turpentine, or any Turpentine, 2.70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 1 gal Turpentine Japan, or any Turpentine Japan, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 3½ gal index oak grown, or any index oak grown, 6.65, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 1# steel wood, or any steel wood, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18,

1911, or at any time, plaintiff sold or delivered to them 1# light cromo yellow, or any cromo yellow, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 1# burnt siene, or any burnt siene, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 4# cromo green, or any cromo green, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 3 gal Silo wood filler, or any wood filler, 4.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 10 gal index white, or any Index white, 19.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 8½ gal floor paint, or any floor paint, 15.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 5 best spar varnish, or any varnish, 13.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 500′ ¼ round 3.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any

time, plaintiff sold or delivered to them 24 brackets for pilot house, or any brackets for pilot house, 2.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold and delivered to them 3# 3d nails, or any nails, .09, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them 1 paint brush 1.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, plaintiff sold or delivered to them Nails, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor A. C. McCaughn 60 hrs at 25c 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor Fred May 60 hrs at 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 58 hrs at 17c 10.15, or that the same is worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor Ed Draugherty 36 hrs at 20c 7.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff

for labor Eugene Kingsberry 60 hrs at 30c 18.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor Ed Daugherty 36 hrs at 20c 7.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor painting F. T. Heyser 30 hrs at 25c 7.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor painting W. L. McCracken 56 hrs at 30c, 16.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor painting Joe Sawyer 60 hrs at 30c 18.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for labor painting Joe Marrison 40 hrs at 25c 10.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 18, 1911, or at any time, they became indebted to plaintiff for Drayage 2.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 20, 1911, plaintiff sold or delivered to them 40# bar iron, or any bar iron, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 20, 1911, or at any time, plaintiff sold or delivered to

them 1 piece 2" pipe 6", or any pipe, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 20, 1911, or at any time, plaintiff sold or delivered to them 25# stage iron, or any stage iron, 2.85, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 21, 1911, or at any time, plaintiff sold or delivered to them 16 3¼ x ¼ bolts, or any bolts, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 21, 1911, or at any time, plaintiff sold or delivered to them 41 ¼ washers, or any washers, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 24, 1911, or at any time, plaintiff sold or del'd to them 2 smoke stacks, or any smoke stacks, 32.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 24, 1911, or at any time, they became indebted to plaintiff for Drayage 1.95, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 24, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughn 38 hrs at 25c 7.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, they became indebted to plaintiff for labor Fred May 32 hrs at 20c 6.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 60 hrs at 17½c 10.50, or that

the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 45 hrs at 20c 9.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, they became indebted to plaintiff for labor Eugene Kingsberry 50 hrs at 30c 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, plaintiff sold or delivered to them 1400# fire clay, or any fire clay, 4.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, they became indebted to plaintiff for labor painting F. T. Heyser 30 hrs at 25c 7.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, they became indebted to plaintiff for labor painting Joe Marrison 30 hrs at 25c 7.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 25, 1911, or at any time, they became indebted to plaintiff for labor painting Joe Sawyer 55 hrs at 30c 16.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 27, 1911, or at any time, plaintiff sold or delivered to them 5# rainbow packing, or any rainbow packing, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 27, 1911, or at any time, plaintiff sold or del'd to them

3 Yale Locks, or any Yale Locks, 1.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 27, 1911, or at any time, plaintiff sold or delivered to them 2 Gross 1 x 10 wood screws, or any screws, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 27, or at any time, plaintiff sold or delivered to them 12 steel buts, or any steel buts, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 27, 1911, or at any time, plaintiff sold or delivered to them 1 gross ¾ x 10 wood screws, or any wood screws, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them 1 gal Index O. S. white, or any index O. S. white, 1.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them 1½ gal Turpentine, or any Turpentine, 1.35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them 25# white lead, or any white lead, 2.06, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them Sand paper, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plain-

tiff sold or delivered to them 50 7 x 10 cabin brackets, 6.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them Brads .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them 2 Engine cross heads, or any cross heads, 9.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or del'd to them 2 8" tiller sheaves, or any tiller sheaves, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them 6 3½ x ¾ bolts, or any bolts, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them 6 ⅝ x 3½ mch bolts, or any mch bolts, .18, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Nov. 28, 1911, or at any time, plaintiff sold or delivered to them 8 ½ x 3 mch bolts, or any mch bolts, .16, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, plaintiff sold or delivered to them Galvanized wire guide 4.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, plaintiff sold or delivered to them Rope clamp 1.40, or that the same

was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they are indebted to plaintiff for making stack britch 8.00, or material for same 6.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughen 26 hrs 25c 6.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor Fred May 40 hrs 20c 8.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 60 hrs 17½c 10.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 45 hrs 20c 9.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor Eugene Kingsberry 50 hrs 30c 16.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor Nathan Hubbard 10 hrs 20c 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor J. W. Pate 22 hrs at 50, 11.00, or that the same was worth that

or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, plaintiff sold or delivered to them ¼# Prusian blue, or any Prusian blue, .20, or that the same was worth that or any sum, or that the price is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 1, 1911, or at any time, they became indebted to plaintiff for labor Joe Sawyer Painter 20 hrs at 30c 6.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 2 2″ ties, or any ties, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time plaintiff sold or delivered to them 1 1½ nipple, or any nipple, .12, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 1 1½ floor plate, or any floor plate, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 2 2″ tees, or any tees, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 2 2 angle valves, or any angle valves, 4.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 2 1″ steel, or any steel, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay

same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 2 1" unions or any unions, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 1 1½ x 2 bush, or any bush, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 1 1½ x tee, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 2 1½ x ½ tee, or any tee, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 8 1" closed nipples, or any nipples, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 2 2 x 6 nipple, or any nipple, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 4 3½ x 3 bolts, or any bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 1 1½ x steel, or any steel, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 1 1½ tee, or any

tee, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 1 1 steel, or any steel, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 1 1½ nipple, or any nipple, .10, or that the same is worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them 40′ 1″ pipe, or any pipe, 2.70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 4, 1911, or at any time, plaintiff sold or delivered to them Pipe fitting, 2.85, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 1 2″ STL, or any STL, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 1 2″ reducer L, or any reducer L, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 6 2″ L 45, or any L. 45, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 1 1″ union, or any union, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof;

they deny that on Dec. 5, 1911, or at any time, plaintiff sold or del'd to them 10′ 1″ pipe, or any pipe, .60, or that the same is worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 4 12 Stl, or any Stl, .48, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 2 1½ closed nipple, or any nipple, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 2 pcs 1½ pipe 5′ 6″, or any pipe, 3.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 5, 1911, or at any time, plaintiff sold or delivered to them 2 3½ pipe flanges, or any flanges, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 7, 1911, or at any time, plaintiff sold or delivered to them 1 3″ cock safety valve, or any safety valve, 17.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them ½ best O. S. spar varnish, or any varnish, 1.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 4 L T sash doors 2 6 x 6 6 1½, or any sash doors, 9.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold

or delivered to them 3 2″ ales, or any ales, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 2″ nipple or any nipple, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 3 1½ nipples, or any nipples, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 2 1½ L .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 2″ L .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 6 ½ x 1 tee, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or del'd to them 4 1″ nipples, or any nipples, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 3 1 x 14 coupling, or any coupling, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 1½ x ¼ tee, or any tee, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any

part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 2″ plug, or any plug, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 100″ ¾ pipe, or any pipe, 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 30′ 1½ pipe, 2.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 10′ 2″ pipe, or any pipe, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ x ¾ coupling, or any coupling, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or del'd to them 4 1¼ tee, or any tee, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or del'd to them 3 1¼ x ¾ bushing, or any bushing, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 3 1¼ L .15, or that the same

was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 3 1¼ x ¾ cross pin, or any cross pin, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 ¾ plug, or any plug, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or del'd to them 40′ 1¼ pipe, or any pipe, 2.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 41½′ 1″ pipe, or any pipe, 2.49, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 18′ 3″ pipe, or any pipe, .72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 19′ 2¼ pipe, or any pipe, .78, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 2 ⅜ angle valve, or any angle valve, .70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 angle valve .65, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8,

1911, or at any time, plaintiff sold or delivered to them 3 1¼ L .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 ½ L .55, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 1 angle valve, or any angle valve, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 3 1¼ gl valve, or any valve, 3.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 41′ 1¼ pipe, or any pipe, 2.87, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or del'd to them 1 2″ tee, or any tee, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or del'd to them 2 2″ union, or any unions, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ check valve, or any check valve, 1.45, or that the same was worth that or any sum, or that the price

charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 2 x ¼ bush, or any bush, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 8, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, plaintiff sold or delivered to them 1 3½ L .45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for board for Daugherty and Ellis 22.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughn 60 hrs 25c 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for labor Fred May 60 hrs 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 70 hrs at 17½c 12.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 60 hrs 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof;

they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for labor Eugene Kingsberry 20 hrs 30c 6.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for labor J. W. Pate 40 hrs 50c 20.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 9, 1911, or at any time, they became indebted to plaintiff for Lettering 11.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 4 1¼ L .72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 4 2½ L 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 4 1¼ L .48, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 1 1¼ whistle valve 2.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 1 galvanized smoke jack, or any smoke jack, 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or del'd to them 4 steam pipe flanges, or any pipe flanges, 6.00, or that the

same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 18 5/8 x 2½ bolts, or any bolts, .45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 1 ¾ x 24 trestle arms, or any trestle arms, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them smoke stack braces 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 42' 2½ pipe, or any pipe, 8.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 2 2½ ells, or any ells, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 2 2½ reducers, or any reducers, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 4 2½ nipples, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 2 2½ bush, or any bush, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed

to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 2 ½ nipples, or any nipples, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 2 ¾ gl valves, or any valves, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 2 ⅜ unions, or any unions, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 11, 1911, or at any time, plaintiff sold or delivered to them 18′ ⅜ pipe, or any pipe, .72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 12, 1911, or at any time, plaintiff sold or delivered to them 2 2½ bush, or any bush, .24, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 12, 1911, or at any time, plaintiff sold or delivered to them 2 ¼ angle valve, or any angle valve, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 12, 1911, or at any time, plaintiff sold or delivered to them 2 ¼ L .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 12, 1911, or at any time, plaintiff sold or delivered to them 18′ ¼ pipe, or any pipe, .72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 12, 1911, or at any time, plaintiff sold or delivered to them

20# ⅜ Manilla rope, or any Manilla rope, 2.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 12, 1911, or at any time, plaintiff sold or delivered to them 3 3½ x 20 inspected flue boilers, or any flue boilers, 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 12, 1911, or at any time, plaintiff sold or delivered to them Pipe hanger 1.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 13, 1911, or at any time, plaintiff sold or delivered to them 450′ B & better partition, or any partition, at 29.00, 13.05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 2 10 x 12 4 Lt sash, or any sash, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 12 nipple, or any nipple, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 ½ x ¾ tee, or any tee, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 2 ⅜ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 4# rainbow packing, or any packing, 3.20, or that

the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 1" tee, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or del'd to them 1 1" bush, or any bush, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or del'd to them 2 ¾ bush, or any bush, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 ¾ nipple, or any nipple, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 3 ¾ bush, or any bush, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 2 ½ nipple, or any nipple, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 18 5/7 x 3 mch bolts, or any mch bolts, .45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 ⅜ x ¼ ell, or any ell, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof;

they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 ¼ ell, or any ell, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 ¼ nipple, or any nipple, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 ⅜ union, or any union, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, plaintiff sold or delivered to them 1 bush .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 14, 1911, or at any time, they became indebted to plaintiff for Drayage 2.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at time, plaintiff sold or delivered to them 122′ ¼ round ¾c .92, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughn 60 hrs 25c 15.00, or that the same was worth that or any sum, or that the price charged is reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time they became indebted to plaintiff for labor Fred May 60 hrs 20c 12.00 or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 70 hrs 17½c 12.25, or that

the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 60 hrs 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time, they became indebted to plaintiff for labor Eugene Kingsberry 30 hrs 30c 9.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time, they became indebted to plaintiff for labor J. W. Pate 40 hrs 50c 20.00, or that the same was worth that or any sum, or that the price charged was a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time, plaintiff sold or delivered to them 4 packing rings, or any packing rings, 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 16, 1911, or at any time, plaintiff sold or delivered to them 2 sets cross heads brasses, or any brasses; 2 sets crank brasses, or any brasses; 8 guide brasses, or any brasses; or 16 cregg brasses, or any brasses, 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 18, 1911, or at any time, plaintiff sold or delivered to them ½ gal Silver grey, or any Silver grey, .85, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or del'd to them 1 gal O. S. spar varnish, or any spar varnish, 3.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec.

19, 1911, or at any time, plaintiff sold or delivered to them 1 gal Silo wood filler, or any filler, 1.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them 1# 3 nails, or any nails, .03, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them 14′ #2 sealing at 21.00, .29, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them ½ gal O. S. spar varnish, or any varnish, 1.65, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them 1½ gal L. T. hard oil finish, or any finish 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them 1 gal Index silver grey, or any silver grey, 1.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or del'd to them 1 ¾ tee, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them 1 ¾ nipple, or any nipple, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them

1 ¾ union, or any union, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 19, 1911, or at any time, plaintiff sold or delivered to them Water gauge 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 20, 1911, or at any time, they became indebted to plaintiff for Tin work, 4.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 20, 1911, or at any time, plaintiff sold or delivered to them 4 galv sheets 30 x 96 #26, or any galv sheets, 3.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 21, 1911, or at any time, plaintiff sold or delivered to them 1½ floor finish, or any floor finish, 2.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 21, 1911, or at any time, plaintiff sold or delivered to them 1½" plug, or any plug, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 21, 1911, or at any time, plaintiff sold or del'd to them 1 1" plug, or any plug, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 21, 1911, or at any time, plaintiff sold or del'd to them 1 ⅜ plug, or any plug, .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, they deny that on Dec. 21, 1911, or at any time, plaintiff sold or delivered to them ½# lamp black, or any lamp black, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or

any part thereof; they deny that on Dec. 21, 1911, or at any time, plaintiff sold or delivered to them 15 gal roof paint, or any roof paint, 7.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 21, 1911, or at any time, they became indebted to plaintiff work on piston 6.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 2, 1911, or at any time, plaintiff sold or delivered to them 2 sheets galv iron, or any galv iron, .72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 21, 1911, or at any time, they became indebted to plaintiff for work on sand pipe 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 21, 1911, or at any time, they became indebted to plaintiff for Drayage, .80, or that the same was worth that or any sum, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 23, 1911, or at any time, plaintiff sold or delivered to them 3 cans Liquid gold leaf 40c, or any gold leaf, 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 23, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughn 60 hrs 25c 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 23, 1911, or at any time, they became indebted to plaintiff for labor Fred May 60 hrs 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that

on Dec. 23, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 70 hrs 17½c 12.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 23, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 60 hrs 20c 12.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 23, 1911, or at any time, they became indebted to plaintiff for labor Eugene Kingsberry 30 hrs 30c 9.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 23, 1911, or at any time, they became indebted to plaintiff for labor J. W. Pate 40 hrs 50c 20.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 23, 1911, or at any time, they became indebted to plaintiff for Painting 53 hrs 30c 15.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 28, 1911, or at any time, plaintiff sold or delivered to them 1 gal Lecticer floor finish, or any floor finish, 2.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 28, 1911, or at any time, plaintiff sold or delivered to them ½ pt alluminum enamel, or any enamel, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 3 chain bolts, or any chain bolts, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30,

1911, or at any time, plaintiff sold or delivered to them 3 foot bolts, or any bolts, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 3 locks, or any locks, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 2 pair spring hinges, or any hinges, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 2 turn buckles, or any turn buckles, 1.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 67# steel can rods, or any rods, 2.01, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 8 can bockles, or any can bockles, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them Enamel paint 1.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 1 gal varnish, or any varnish, 2.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or del'd to them bell cord .40, or that the

same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or del'd to them 8 1¼ hex nuts, or any hex nuts, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 16 ½ x 2½ cap screws, or any cap screws, .80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for Packing .80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for Man hole packing 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for Bell packing, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them Sheet lead, or any lead, .85, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for Smoke jack for pilot house 1.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 1 Ideal stove, or any stove, 8.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed

to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them stove pipe .70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughen 69 hrs 17.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor Fred May 69 hrs 13.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 70 hrs 12.36, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 69 hrs 18.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor J. W. Pate, 69 hrs 34.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same, or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 4′ 8″ 8″ pipe, or any pipe, 4.20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 10# nails, or any nails, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered

to them 94½ Bu Lump coal, or any coal, 11.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor A. C. McKaughnan 60 hrs 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor Fred May 58 hrs 11.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 10 hrs 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor Jim Winchell 70 hrs 12.35, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor Clarence Baker 38 hrs 9.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for labor J. W. Pate 10 hrs 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, they became indebted to plaintiff for 3 hrs painting, or any painting, .90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Dec. 30, 1911, or at any time, plaintiff sold or delivered to them 72′ 3 2 x 12 12, 64′ 1 4 x 16 12, 240′ 16 1½ x 12 10,

648′ 18 2 x 12 18, 120′ 6 2 x 6 20, 216′ 2 6 x 12 18, 216′ 2 x 12 18, 225′ 9 2½ x 10 12, 120′ 4 2½ x 12 12, 75′ 3 2½ x 12 10, total 1800′, less 384′ returned 1416′ at 35.00, 49.56, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, they became indebted to plaintiff for Drayage 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan 8, 1912, or at any time, plaintiff sold to them 2 bed plates, or any plates 3.52, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan 8, 1912, or at any time, plaintiff sold or delivered to them 1 Fire Pump 59.50, or that the same was worth that or any sum, or that the price paid (charged) is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan 8, 1912, or at any time, plaintiff sold or delivered to them 1 1¼ gl valve, or any valve, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or del'd to them 1 1½ gal valve, or any valve, 2.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 1 gl valve, or any valve, 1.45, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 3 2″ nipples, or any nipples, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time plaintiff sold or delivered

to them 3 1″ ell, or any ell, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 1¼ ell, or any ell, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 1¼ tee, or any tee, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 1″ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 9′ ¾″ pipe, or any pipe, .54, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 10′ 1″ pipe, or any pipe, .70, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 9′ 1¼″ pipe, or any pipe, .72, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 piece 2″ pipe 4′, or any pipe, .64, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 piece 2 x 18″ pipe, or any pipe, .25, or that the same was worth that or any sum, or that the price charged is a reason-

able one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 piece 2 x 30″ pipe, or any pipe, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 2 2″ ells, or any ells, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 2″ tee, or any tee, .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 drip pan .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 1″ union, or any union, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 ¾ union, or any union, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 ¾ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 3 2″ ells, or any ells, .60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them

4 ¼ x 5 mch bolts, or any bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 ¾ x 5 nipples, or any nipples, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them Boiler pipe and covering 16.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 2 pieces poplar or any poplar, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 1½ tee, or any tee, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 8, 1912, or at any time, plaintiff sold or delivered to them 1 2″ ell, or any ell, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, they became indebted to plaintiff for labor A. C. McKaughan 60 hrs 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, they became indebted to plaintiff for labor Fred May 45 hrs 9.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, plaintiff sold or delivered (they became indebted to plaintiff) for labor Fletcher Pauley 50 hrs 10.00, or that the same was worth that or any sum,

or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time they became indebted to plaintiff for labor Jim Winchell 70 hrs 12.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, they became indebted to plaintiff for labor Clarence Baker 60 hrs 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, they became indebted to plaintiff for labor Jim Bishop 50 hrs 15.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, they became indebted to plaintiff for labor Milt Squires 13 hrs 1.95, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, they became indebted to plaintiff for labor, J. W. Pate 25 hrs 12.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 13, 1912, or at any time, plaintiff sold or delivered to them 1 2″ plug, or any plug, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 19, 1912, or at any time, they became indebted to plaintiff for Drayage, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 19, 1912, or at any time, plaintiff sold or delivered to them 23 Bu coal, or any coal, 2.42, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan.

20, 1912, or at any time, they became indebted to plaintiff for glass and glazing .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 ⅝ eye bolts, or any eye bolts, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 ½ eye bolts, or any eye bolts, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 1 1″ union, or any union, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 1 1″ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 1 ¾ nipple, or any nipple, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 9′ 1″ pipe, or any pipe, .54, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 1 ¼ union, or any union, .20, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 10′ 1½″ black pipe, or any pipe,

.90, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 1 1 x 12 pipe, or any pipe, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 3 1" ells, or any ells, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or del'd to them 1 1½ gl valve, or any valve, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 1 ¾ gl valve, or any valve, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 4 yawl staffs, or any yawl staffs, 10.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 4 floor plates, or any floor plates, .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they became indebted to plaintiff for work on bolts .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 6 fire buckets, or any fire buckets, 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or

that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 8 ½ x 2 cap screws, or any cap screws, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 ⅝ x 15 truss rods, 2.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they became indebted to plaintiff for work on crank keys, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 cross head keys, or any cross head keys, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 pillow blocks, or any pillow blocks, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 ¾ x 6 mch bolts, or any mch bolts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at time, plaintiff sold or delivered to them ¾ cut washers, or any cut washers, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 16# galv iron work, or any iron work, 2.40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part

thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 5 steel backings, or any steel backings, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 1¼ hex nuts, or any hex nuts, .10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 2 fuse plugs, or any plugs, 1.60, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 20# guy wire, or any guy wire, 1.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they became indebted to plaintiff for labor A. C. McHauhnan 58 hrs 14.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they became indebted to plaintiff for labor Fred May 70 hrs 14.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they became indebted to plaintiff for labor Jim Winchell 10 hrs 1.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they became indebted plaintiff for labor Fletcher Pauley 44 hrs 8.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they be-

came indebted to plaintiff for labor J. W. Pate 36 hrs 18.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, they became indebted to plaintiff for labor Clarence Baker 20 hrs 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 26# Heuser iron, or any Heuser iron, 1.30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 20, 1912, or at any time, plaintiff sold or delivered to them 8# guy wire, or any wire, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 22, 1912, or at any time, plaintiff sold or delivered to them 36# mch steel, or any mch steel, 1.26, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 22, 1912, or at any time, plaintiff sold or delivered to them, 4 1″ nuts, or any nuts, .24. or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 22, 1912, or at any time, plaintiff sold or delivered to them 8 ½ x 9″ mch bolts, or any bolts, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 22, 1912, or at any time, plaintiff sold or delivered to them 8 ½ x 12 mch bolts, or any mch bolts, .48, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 23, 1912, or at any time, plaintiff sold or delivered to them 36# mch steel,

or any mch steel, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 26, 1912, or at any time, plaintiff sold or delivered to them 5/16 x 4 bolts, or any bolts, .52, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 26, 1912, or at any time, plaintiff sold or delivered to them 1 8 sheet Galv roofing, or any roofing, .48, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 26, 1912, or at any time, plaintiff sold or delivered to them 2 packing blocks, or any packing blocks, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 24, 1912, or at any time, plaintiff sold or delivered to them 20′ ¼ round .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 24, 1912, or at any time plaintiff sold or delivered to them 13# mch steel, or any mch steel, .65, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 24, 1912, or at any time, plaintiff sold or delivered to them 22 hose hooks, or any hose hooks, 1.10, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 24, 1912, or at any time, plaintiff sold or delivered to them 10 life float hooks, or any life float hooks, .50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 26, 1912, or at any time, plaintiff sold or delivered to them 3# rail bow packing, or any packing, 2.40, or that

the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, they became indebted to plaintiff for labor A. C. McKaughnan 35 hrs 8.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, they became indebted to plaintiff for labor Fred May 70 hrs 12.25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, they became indebted to plaintiff for labor Fletcher Pauley 35 hrs 7.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, they became indebted to plaintiff for labor J. W. Pate 10 hrs 5.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them 500# fire clay 3c 1.50, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them 1 pulley .25, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them door spring .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them Bolts .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof;

they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them 3 sets door knobs, .40, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them Screws .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them 3 chalk lines, or any chalk lines, .30, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them screws .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them bolts .75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them box tacks .05, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, they became indebted to plaintiff for 11⅔ days board C. Baker 6.67, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 27, 1912, or at any time, plaintiff sold or delivered to them or that they became indebted to plaintiff for bolts, nails, brads, screws, washers, wire, hinges, bill Conrad Payne & Co., April 22, 1911, to Dec. 16, 1911, 4.96, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 31, 1912, or at any time, they became

indebted to plaintiff for labor Fred May 50 hrs 8.75, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 31, 1912, or at any time, they became indebted to plaintiff for labor 3 hrs drilling and putting in test plug 3.00, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 31, 1912, or at any time, plaintiff sold or delivered to them or that they became indebted to plaintiff for 2¼" plugs, or any plugs, .15, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof; they deny that on Jan. 31, 1912, or at any time, plaintiff sold or delivered to them or that they became indebted to plaintiff for 15 Bu coal, or any coal, 1.80, or that the same was worth that or any sum, or that the price charged is a reasonable one, or that they agreed to pay same or any part thereof.

Paragraph 4. Further answering, defendants say that each and every alleged item and all services rendered by plaintiff were under a written contract between it and these defendants.

Defendants say that the only contract they ever had and the only sum or sums of money they ever agreed or promised to pay plaintiff were based upon a written contract between plaintiff and defendants to repair, remodel and rebuild the Steamer R. D. Kendall, which has been rechristened The Golden Girl.

Defendants say that, desiring to remodel and rebuild a steamer which they then owned, they entered into a written contract with the plaintiff to do said work, and all of the items charged in the preceding paragraph, which are excessive, exorbitant and unjust, were furnished, if furnished at all, which they deny, and all the work done was under a written contract between the plaintiff and the defendants, which written contract is in words and figures as follows:

"Cloverport, Ky., March 23, 1911.

"Messrs. Jesse & Rounds,
Owensboro, Ky.

"Gentlemen:

"On yesterday we mailed you blue prints giving specifications in detail for the remodeling and rebuilding and converting the R. D. Kendall into an excursion steamer along the lines suggested and agreed upon between us. To all intents and purposes, these cover the work to be done from the deck up, including the docking of the boat, recaulking, one new stack and lengthening and changing old stack to conform with new one, turning boiler around, taking out engines and putting in the Parker engines and such machine work necessary to be done on same to put in first-class condition, building new wheel, mast poles, raising the bow, new cylinder timbers (any work other than turning round and resetting boiler which may show up to be extra), all necessary ropes for masts and in fact everything to be done to make the job first-class in workmanship, at our estimate of Sixteen Hundred, Ninety and 66/100 Dollars ($1690.66).

"This price includes everything to be done as shown by the blue print, including the docking and recaulking the hull as above stated, except any extra work that we might find in the boiler and any new work that we may have to put in the hull which we can not see or make an estimate on, but all extra work to be done by us to complete the job and put same in good running condition and acceptable to the U. S. Steamerboat Inspectors not to cost over Two Hundred Dollars ($200.00), said extra work if any found and material used we agree to do and furnish at the actual cost therefor plus ten per cent.

"All lumber and timbers used in the rebuilding to be of grade #1 common. Other material to be first-class and workmanship guaranteed.

"We have endeavored to make everything as clear to you as is possible to make on paper, having worked very diligently in getting up our plans and specifications, and while they are, practically speaking, complete, there is

quite a number of little things not shown on them, which we thought entirely unnecessary to spend more time in enumerating them, as our proposal carries with it all of these small items to complete the job. In short, we do the work for the sum named ($1690.66) and guarantee that such extra work as may have to be done that we can not see or figure on shall not cost you exceeding the sum of Two Hundred Dollars ($200.00).

"We are anxious to get the boat here and get to work on it and shall complete same at the very earliest possible date, which should not be longer than about June 1st to 10th, barring too much weather unfit for work.

"Will be glad to answer any further inquiries you may wish to make about the work to be done which we now believe all parties understand fully in a general way.

"Thanking you for past favors, we are

"Very truly yours,

"Cloverport Foundry and Machine Co.

"By Marion Weatherholt."

The defendants accepted said written contract and delivered the Steamboat R. D. Kendall to the plaintiff under said written contract to be remodeled and rebuilt according to the terms of said written contract as shown in said writing and the blue prints which plaintiff furnished to the defendants which are filed herewith and made a part hereof.

Defendants say the contract between plaintiff and themselves was in duplicate and plaintiff has in its possession a duplicate copy of said written contract and blue prints which it is now asked to file.

Paragraph 5. Further answering, defendants say that while under the written contract above quoted they were not required to pay the defendants any part of the consideration for the remodeling, reconstructing and rebuilding of the boat, which was $1690.66, until the said boat was fully reconstructed, remodeled and rebuilt, and delivered to defendants, yet at the instance and request of the plaintiff, defendants did on the 2d day of October,

1911, pay to plaintiff $500.00 by their check on the Owensboro Banking Co., payable to the order of the plaintiff, which check recited on its face that the payment of said $500.00 was "*on contract for reconstructing the R. D. Kendall under contract of March 23, 1911,*" a copy of which check the defendants file herewith as a part hereof. They say that the plaintiff accepted, and collected said $500.00 under the contract of March 23, 1911, above quoted, and they plead said check as a payment, and in addition thereto they plead the said check and the acceptance of the amount thereof as an estoppel upon the plaintiff to claim that it had any other or separate contract, or that the defendants agreed or promised to pay it any sum except as specifically stated in the written contract above quoted.

Paragraph 6. Defendants deny that plaintiff has complied with its contract of March 23, 1911, or at all. By said contract between plaintiff and defendants the plaintiff contracted and agreed to remodel, rebuild and convert the Steamer R. D. Kendall into an excursion boat; and that under said contract the work was to be done from the deck up, including the docking of the boat, recaulking, one new stack and lengthening and changing old stack to conform with new one, turning boiler around, taking out engines and putting in the Parker engines, and such machinery work necessary to be done on same *to put said boat in first-class condition,* building new wheel, mast poles, raising the bow, new cylinder timbers, etc. The plaintiff further contracted and agreed that it would do and perform each and every undertaking in the contract aforesaid and complete the job and put it in good condition *and acceptable to the United States Steamboat Inspectors.* And that all of said work should be done and completed not later than June 10, 1911, and that the boat should not later than that date be delivered to defendants. The defendants say the plaintiff broke and violated its contract in this, it never did remodel, reconstruct or complete the R. D. Kendall according to the terms of its contract, or at all. They say that

when the plaintiff had pretended to have completed its contract, which was not until the —— day of March, 1912, the said boat was submitted to the United States local inspectors and they rejected same because the work was not done in first-class manner and because the said steamboat as remodeled and repaired by plaintiff was not in a seaworthy condition. The defendants under the rules and regulations of the United States local inspectors and under the marine laws of the United States could not operate the said boat or navigate it at all until they had made sundry and divers repairs thereon required by the United States local inspectors, to-wit, they were under the rules prescribed by the United States local inspectors required to refit and reconstruct the machinery plaintiff had put upon said boat, which they did, and this cost them $191.00; they were required to furnish material and to employ competent engineers to do the work, which they did, at an expense of $191.00. These items were necessary before the defendants could operate said boat under the marine laws of the United States at all, and the defendants were compelled to pay and did pay the same, no part of which has ever been repaid to them and they plead the same as a counter-claim and set-off against the plaintiff.

Defendants further state that the plaintiff broke and violated its contract in this, it did not properly, or according to the terms of the contract, construct the hurricane deck; it constructed it of such frail and light material that it is dangerous for passengers to go upon the roof, and in this plaintiff broke and violated its contract. Defendants say they have been on this account damaged in the sum of $500.00, no part of which has ever been paid, and that it will cost that sum to make said hurricane deck safe for passengers to walk upon, and that it will cost them said sum to reconstruct the hurricane roof in a substantial manner so as to comply with the terms of the contract between plaintiff and defendants and the laws of the United States, and they plead this sum as a counter-claim and set-off.

Defendants say that by the contract between themselves and the plaintiff the plaintiff agreed and undertook that it would reconstruct, remodel and equip the said steamboat according to the terms of the contract and deliver it to the defendants on or before the 10th day of June, 1911, and they say plaintiff broke and violated its contract in that respect.

They say, relying upon the faith of the plaintiff's contract (said boat being an excursion boat), they sold the privileges of selling soft drinks or refreshments on the said boat from June 10 to October 15, 1911, at and for the price of $900.00, and they had a signed contract with the party buying said privileges, but because of the breach of the contract on the part of the plaintiff and its failure to complete and deliver said boat to them within said time, they were wholly unable to collect any part of said sum and that they thereby directly sustained damage in the sum of $900.00, which they plead as a counterclaim and set-off herein.

Defendants further state they had contracts with the "Woodmen of the World, Owensboro, Ky.," between Owensboro, Ky., and Tell City, Ind.; the Rebeccah Lodge, of Owensboro; the Red Men, of Owensboro, Ky.; Mr. Ed. Martin, of Rockport, Ind., for certain excursions which would have netted defendants $1,500.00, all of which they lost on account of the breach of plaintiff's contract with them and which contracts they made on the faith of the contract of plaintiff with them.

Further answering, defendants say that during the month of October, 1911, there was held in the town of Rockport, in the State of Indiana, a fair which extended through the entire week, and these defendants had contracts under which and by which they could and would have netted a profit of $500.00, but they lost said contracts because the plaintiff had broken and violated its contract and had failed to deliver the boat to them as it had contracted to do.

Defendants say that by reason of the breaches of the contract on the part of the plaintiff they have sustained the following damages, to-wit:

Loss and expense, labor, etc., for rebracing under instructions of U. S. Local Inspectors...	$ 143.51
Refitting machinery and engineer's time under instructions of U. S. Inspectors.....	191.00
Privileges by contract for selling soft drinks as aforesaid	900.00
Cancelled excursions because boat was not completed or delivered according to contract...	1,500.00
Loss by failure to properly reconstruct hurricane	500.00
	$3,234.51

The defendants say plaintiffs, by virtue of the breach of their contract with the defendants are now indebted to them in the sum of $3,234.51, all of which is the direct result of the plaintiff's breach of its contract with defendants, which sums are due and wholly unpaid, and defendants plead the same as a set-off and counter-claim herein.

Further answering, defendants say each of the matters set out in the petition present Federal questions which are exclusively cognizable in the limited States courts and that this court has no jurisdiction either of the persons of the defendants or the subject-matter of this action. They plead and rely on these facts in bar of this court's jurisdiction and in bar of any recovery against them herein.

Wherefore defendants pray that plaintiff take nothing by its petition and that the same be dismissed and they pray judgment over against the plaintiff in the sum of $3,234.51, and they pray on final hearing for all just and equitable relief.

SWEENEY, ELLIS & SWEENEY,
Attorneys for Defendants.

F. T. Rounds, one of the defendants, says that he believes the statements in the foregoing Answer, Set-off and Counter-claim are true.

F. T. ROUNDS.

Subscribed and sworn to before me by F. T. Rounds, this 3d day of May, 1912.

W. W. OWEN,
Judge, Daviess County Court.

BRECKINRIDGE CIRCUIT COURT.

CLOVERPORT FOUNDRY & MACHINE CO., - - *Plaintiff*,

versus

F. T. ROUNDS AND S. A. JESSE, - - - *Defendants.*

REPLY TO ANSWER, SET-OFF AND COUNTER-CLAIM.

Comes the plaintiff and for reply to the fourth paragraph of the answer, counter-claim and set-off denies that each of every alleged item, or all services rendered by plaintiff, were under written contract between it or these defendants; or that the only sum of money that they ever agreed or promised to pay plaintiff were based upon a written contract between plaintiff or defendants to repair, remodel or rebuild the steamer, "R. D. Kendall," which has been rechristened "Golden Girl."

Plaintiff admits that it entered into the written contract set forth in said answer at the date thereof, but that said contract was abrogated by agreement, as hereinafter set forth, but it denies that all the items charged in the itemized account filed with its petition, or any of said items, are excessive, or exorbitant, or unjust, or that they were furnished, or all the work was done, under the said written contract between the plaintiff or the defendants, which written contract is in words and figures as set out in said Paragraph Four.

Plaintiff admits that said written contract was accepted by defendants, and the said steamboat, "R. D. Kendall," was delivered to the plaintiff under said written contract to be remodeled and rebuilt according to the

terms of said written contract and the blue prints which plaintiff furnished to the defendants, but they aver that said written contract was subsequently abrogated and in lieu thereof an additional contract, or contracts, was entered into as hereinafter specifically set forth.

Replying to Paragraph Five of said Answer, Counterclaim and Set-off, plaintiff admits that on the 2d day of October, 1911, that the defendants paid to it the sum of $500.00 by their check on contract which was entered into subsequent to the written contract filed in said answer, but they deny that said check on its face recited that the payment of said $500.00 was "On contract for reconstructing the 'R. D. Kendall' under contract of March 23, 1911," and it avers that said check originally read that $500.00 was on contract and that if said check now recited that said $500.00 was "On contract for reconstructing the 'R. D. Kendall' under contract of March 23, 1911," the words "*For constructing the 'R. D. Kendall' under contract of March 23, 1911,*" are a forgery and were written thereon after said check had been indorsed; but if it did sign said check for $500.00 which read "On contract for reconstructing the 'R. D. Kendall' under contract of March 23, 1911," then it did so through mistake, one of which is true, but which the plaintiff does not know. It denies that it collected said check under the said contract of March 23, 1911, or that said check was a payment on said contract of March 23, 1911, or that said check or the acceptance of the amount thereof is an estoppel on its part, or is in bar of its right to plead the subsequent contracts hereinafter specifically set forth, and it denies that the defendants did not agree or promise to pay it any sum except as specifically set forth in the written contract above quoted.

Replying to Paragraph Sixth, it admits the execution of the contract of March 23, 1911, but avers that thereafter said contract was abrogated and other contracts made, as hereinafter specifically set forth, and it denies that it broke or violated its contract in this: It never did remodel, reconstruct or complete the "R. D. Kendall"

according to the terms of its contract, or at all, or that when it completed its contract the said boat was submitted to the U. S. Local Inspectors and they rejected the same because the work was not in first-class manner, or because the said steamboat as remodeled or repaired by plaintiff was not in a sea-worthy condition; or that the defendants, under the rules and regulations of the United States Local Inspectors, or under the Marine Laws of the United States, could not operate the said boat or navigate it at all until they had made sundry or divers repairs thereon, required by the U. S. Local Inspectors, to-wit: That under the rules prescribed by U. S. Local Inspectors they were required to refit or reconstruct said machinery plaintiff had put on said boat, or that they did so reconstruct or refit machinery at a cost of $191.00, or any sum, or that they were required to furnish material or to employ competent engineers to do the work, or that they did so employ competent or any engineers to do the work at an expense of $191.00, which was to have been done by the plaintiff, or any expense, or that these items were necessary before the defendants could operate said boat under Marine Laws of the U. S., or at all, or that defendants were compelled to pay or did pay the same.

It denies that it broke or violated its contract in this: That it did not properly or according to the terms of the contract construct the hurricane deck, or that defendants have been on this account damaged in the sum of $500.00, or any sum, or that it will cost that sum to make said hurricane deck safe for passengers to walk thereon, or that it will cost them said sum to reconstruct the hurricane roof in a substantial manner so as to comply with the terms of said contract between plaintiff or defendants, or the laws of the United States.

Plaintiff admits that under the terms of the original contract that it was to deliver said boat on or before the 10th day of June, 1911, but it avers that said contract was abrogated, as hereinafter specifically set forth, and that under the new contract the date of delivery, of the

10th day of June, 1911, as embodied in said written contract, was annulled.

Without waiving the demurrer filed to Paragraph Seven, the plaintiff for reply thereto states that it has no knowledge or information sufficient to constitute a belief as to whether or not the matters and things therein pleaded are true, and it therefore denies that the defendants sold the privilege of selling soft drinks or refreshments on said boat from June 10th to October 15, 1911, at or for the price of $900.00, or they had signed a contract with the party buying said privilege, or that because of the alleged breach of the contract on the part of the plaintiff, or its failure to complete or deliver said boat to them within said time, they were wholly unable to collect any part of said sum, or that they thereby directly sustained damage in the sum of $900.00, or in any sum, or that they had contracts with the Woodmen of the World, Owensboro, Ky., between Owensboro, Ky., and Tell City, Ind.; the Rebeccah Lodge, of Owensboro, Ky.; the Redmen, of Owensboro, Ky., or Mr. Ed Martin, of Rockport, Ind., for certain excursions which would have netted defendants $1,500.00, or any sum, or that they lost that sum, or any sum, on account of the alleged breach of plaintiff's contract with them, or that said alleged contracts mentioned were made on the faith of the contract of plaintiff with them. It denies that during the month of October, 1911, that these defendants had contracts under which or by which they could or would have netted a profit of $500.00 which they lost because of the alleged violation of plaintiff's contract to deliver the boat to them, which they deny they violated their contract in that particular as hereinafter set forth, or that by reason of the alleged breaches of the contract on the part of the plaintiff defendants have sustained the following damages, to-wit:

	Loss and expense, labor, etc., for rebracing under instructions of U. S. Local Inspectors	$ 143.51
or	Refitting machinery and engineer's time, under instructions of U. S. Inspectors . .	191.00
or	Privilege by contract for selling soft drinks, as aforesaid	900.00
or	Cancelled excursions because boat was not completed or delivered according to contract	1,500.00
or	Loss by failure to properly reconstruct hurricane roof	500.00
		$3,234.51

Each and all of which items the plaintiff denies the defendants suffered in loss by reason of any alleged failures to comply with its contract which it avers it did not violate as hereinafter set forth.

Plaintiff denies that it is indebted to the defendants in the sum of $3,234.51, or any sum, which is the direct result, or any result of the plaintiff's breach of its contract with the defendants, or that each or any of the matters set out in the petition present Federal questions which are exclusively or at all cognizable in the United States courts, or that this court has no jurisdiction either of the persons of the defendants or of the subject-matter of this action, or that such are a bar of this court's jurisdiction, or is in bar of any recovery against them herein.

For further reply and as an additional defense to the answer, set-off and counter-claim herein, the plaintiff avers that it is true that the letter dated "Cloverport, Ky., March 23, 1911," and addressed to Messrs. Jesse and Rounds, Owensboro, Ky., clearly set forth the nature, character, extent of and compensation for the repairs at the date thereof then contracted by it to be done on the steamboat in controversy. It avers that thereafter, on or about the 11th day of April, 1911, that the said steamboat, then known as the "R. D. Kendall," was landed

in the city of Cloverport, Ky.; that immediately thereafter and before any inspection of the boat could be had that water arose in the Ohio River to such proportions as prevented any work, labor or inspection of said boat for a period of about 30 days thereafter; that about the last day of May, 1911, a U. S. Government Inspector, Capt. Abram, of Louisville, at the plaintiff's request, came to Cloverport and inspected said boat. The contract of March 23, 1911, was made known to said U. S. Government Inspector and the said Government Inspector then and there suggested that the contract as made while it would be sufficient to cause said steamboat to pass Government inspection and would render it seaworthy, yet within one or two years at the outside that there were other repairs not embraced in said written contract which would have to be done and the said steamboat inspector suggested that the owners of said boat, to-wit, the defendants, should be communicated with and told of his suggestions, which suggestions of said inspector amounted to practically rebuilding said boat, and he suggested that such should be done and her name changed; that thereupon the plaintiff telephoned to the defendants and the defendant, J. T. Rounds, came to Cloverport, Ky., and after looking over the boat and being told of the suggestions made by the said Government Inspector the said J. T. Rounds then and there abrogated the written contract filed with the petition and in lieu thereof made the following agreement, which agreement was acquiesced by the plaintiff, to-wit: That all the work as specifically set forth in said written contract should be done, but in addition thereto all planking and all timbers were to be made anew in said boat; all deck timbers were to be made of new timber, and to relay all of the deck; that the plaintiff was to be paid thereof the actual cost of all labor and material furnished, plus 10%, and the said company, the plaintiff was to keep strict account of all material and labor to be furnished, to be paid for when the boat was completed, and it was then conjectural that said boat could be completed under said contract

about September, 1911, the plaintiff agreeing to perform said work and furnish said materials and to complete said boat as soon thereafter as it could be done, barring unavoidable accidents or delay.

It avers further that in August, 1911, and after it had nearly completed the hull of the boat, as per the second agreement that Mr. Jesse, one of the defendants, after inspecting said boat, then and there suggesting that the cabin should be made anew to correspond with the newness of the other part of the boat, and thereupon Mr. Jesse ordered the plaintiff to build the cabin anew on the same terms and conditions as under the first and second contract except as to the time of the completion; that it was then conjectured that the said boat could be gotten ready for delivery in December, 1911, with the new cabin, as indicated herein; that the plaintiff then and there agreed to and with the defendants to reconstruct anew the said cabin and they did so, and she, on completion, was rechristened "Golden Girl," and the said boat was ready for delivery about the middle of December, 1911; that upon its completion U. S. Government Inspectors inspected said boat and accepted the boiler and hull as meeting all the Governmental requirements, but said inspectors recommended additional improvements, to-wit, additional file pump, smothering pipe in hull, and emergency tiller cable. Said additional improvements were made by the plaintiff and agreed to be paid for by the defendants at the original cost price for the labor and material, plus 10%. It avers that during the latter part of December, 1911, the defendants, Rounds and Jesse, were notified that the said boat was complete in every particular, and had been accepted by the inspectors and was ready for delivery; that thereupon the said Rounds and Jesse came to Cloverport, in company with an engineer and fireman, and inspected said boat, turned the wheel, and pronounced her satisfactory in every particular; that thereupon the said Rounds and Jesse attempted to take the said boat away with them, but the plaintiff thereupon refused to so permit them to take said boat

until it was paid for according to the contract. It avers that the defendants refused to pay for said boat and demanded that it be delivered over to them without having paid therefor, which the plaintiff refused to so permit until the same was paid for or satisfactory arrangements made for the payment of the money due thereon, as set forth in its petition; that thereupon, upon advice, it instituted this action and the attachment was levied upon said boat and the said boat was kept in the possession of the plaintiff until the 26th day of February, 1912, at which time, under orders of the Breckinridge Circuit Court, the boat was released and turned over to the defendants, Rounds and Jesse, upon the execution of the bond filed in this action; that on the day the said boat was delivered to said company, on date of the execution of said bond, that the plaintiff then and there offered to put said boat under its own steam and to give the defendants a trial thereof in every particular, but the defendants then and there, acting by and through its agent, waived any further trial of said boat, and accepted said boat as complete in every particular under the contract, and took same in their possession, since which time plaintiff has not seen said boat.

Plaintiff avers that the itemized account filed is a true, accurate and correct account of the labor and materials furnished at the original cost, plus 10% profit, as agreed upon, and that it has in every particular performed its contract.

Wherefore, plaintiff prays that said answer, counterclaim and set-off be dismissed; that it recover of the defendants as prayed for in its original petition, and for all proper and equitable relief.

CLAUDE MERCER,
Attorney for Plaintiff.

BRECKINRIDGE CIRCUIT COURT.

CLOVERPORT FOUNDRY & MACHINE CO., - - *Plaintiff,*

versus

F. T. ROUNDS AND S. A. JESSE, - - - *Defendants.*

AMENDED ANSWER AND COUNTER-CLAIM.

The defendants by leave of court amend their original answer herein and say:

They are not mechanics, ship builders or ship carpenters; when they filed their original answer they were without accurate information so as to state in detail the items of unskilled workmanship performed by plaintiff on the boat, R. D. Kendall, now called the Golden Girl. Since the filing of their original answer they have caused the work done by plaintiff on the Golden Girl to be carefully examined by a competent ship carpenter and are now able to state correctly many items of the work done by plaintiff, which was unskillfully done and not done in accordance with the terms of plaintiff's contract and which was so unskillfully done as to make said boat unsea-worthy and to render it practically worthless.

Defendants for amendment to their original answer and to conform to the evidence say among the breaches of plaintiff's contract with them, in the reconstruction and remodeling of said steamboat, plaintiff broke and violated their contract as follows:

They say the work done by plaintiff on this boat was not done according to contract; it was done and performed in an unskillful manner, and it constituted and was a botch job in manner and form as follows:

They say plaintiff in reconstructing the front stairway of this boat did the work improperly they placed the risers ten inches and the tread seven and one-half inches; this construction they charge was imperfect and unskillful. Instead of the risers being ten inches and the tread seven and one-half inches, that work should have been done and performed in the very opposite manner in order to have made the same a properly constructed job. The stairway as constructed by plaintiff is a dangerous structure, either to be ascended or descended by passengers going onto or coming off of the boat.

The opening above the passageway is too low; it is so low that persons going up or coming down the front stairway will not only bump their heads against it, but it endangers the safety of passengers going onto and coming off of said boat. This construction is unskillful in the first degree.

The risers on the stairway are not properly constructed; they are not nailed or fastened, but are loose, and this is very imperfect and unmechanical construction.

The stirway should have been constructed at an angle of thirty-three degrees; it is constructed at an angle of forty-five degrees, which makes it too steep for safety.

The only work done by plaintiff on the hull of said boat was to put some planking on each side thereof, and this work was not skillfully or properly done; it was not properly caulked or made water-tight.

The work done by plaintiff on the hull of the boat was not of more than $500.00 in value if the work had been done according to contract; performed in the manner it was it is not worth $250.00.

The work done by plaintiff on the hull is defective and not according to contract in the following particulars:

Where outriggers pass through the planking of the boat they are improperly sawed. There is an opening on each side of the hull (which plaintiff pretended to repair), through which you can see daylight. This should have been made water-tight in order to have made it a

first-class job, as plaintiff agreed and contracted the job should be.

The caulking on the hull which plaintiff attempted to do was improperly done, because it left the boat to leak, and if it had been done according to contract, it would not have leaked. The coamings around the hatches were constructed in a most unworkmanlike manner; they were so constructed as to let the water run down onto the deck; if it had been properly constructed, the water would have been shed off the deck into the river; and this deck should have been so caulked and constructed as to prevent the water from running onto the deck, which it now does, to the great detriment and injury of said boat.

The defendants say the work done about these hatchways and on the deck aforesaid was so unskillfully done as to make the boat unsafe for navigation and so as to render it not only unsea-worthy, but to make the boat a very shoddly constructed craft and of little value.

Defendants say the hurricane deck is built of such frail material as not to admit passengers thereon, and to render it unsafe. Under the contract between plaintiff and defendants, passengers necessarily would, as the general custom is, go upon the hurricane deck. But the hurricane deck was so constructed by plaintiff that no one can go upon it with safety, and that is an injury and damage to defendants, and was and is a breach of the contract between plaintiff and defendants, on account of which defendants have sustained great damage.

Defendants say if the boat was loaded with passengers, persons could not go upon the hurricane deck; which fact greatly diminishes the value of the craft as an excursion boat, the purpose for which it was reconstructed by plaintiff. And moreover, they say water flows through the openings on said deck down to the other decks of the boat and tends to make it unsafe and to sink it; this work was unskillfully and improperly done by plaintiff, and not in accordance with the contract.

The planking placed on the boiler deck is doubly as wide as prudent construction authorizes, and as plaintiff contracted to lay it; and as a result of this the planking warps and leaks onto the lower deck and this construction was and is unskillfully and carelessly done.

The planking on the main deck, if that deck had been constructed according to the terms of the contract, should not have been more than four and one-half inches wide, whereas the planks placed there by plaintiff are more than twice that width, and, moreover, the planks on the deck should have been laid in white lead, and plaintiff broke and violated this part of its contract, because it did not lay said planks in white lead, and used plank so wide that it can not be made safe; and the work it did on this deck is unskillful and in violation of the contract and practically of no value at all.

Defendants further say that the carpenters' work done on the boiler deck floor was not properly done. The dance hall on said deck as aforesaid should, according to the terms of the contract, have been laid in narrow planks, not more than two or two and one-half inches wide; whereas the planks placed there by plaintiff are about four inches wide, and in placing said planking there it broke and violated the terms of its contract.

Defendants say the manner in which they placed said planks on said floor are in open violation of the terms of its contract. Plaintiff contracted to construct the floor of the dance hall so as to make it safe for large numbers of persons to dance on at one and the same time. It broke and violated its contract in that respect, because said dance floor is not safe for a large number of persons to dance on at the same time and thereby defendants have been greatly injured and damaged.

Further answering, defendants say plaintiff broke and violated its contract in this: It contracted to place proper stanchions or upright supports over the boiler deck or dance hall deck; this it failed to do; and its construction of the roof to this deck is in violation of its contract and was not done or performed according to

the terms of the contract. The ridge poles over the dance hall or main deck is not properly or safely supported, and were not constructed according to the terms of the contract.

The rail on the outside of this deck was not built according to the terms of the contract; it is weak, imperfect and insecure. The manner in which plaintiff constructed the railing and other work it did gives the boat a list, and it makes it lean to one side. This is true as to the whole construction done by plaintiff on said boat, including the pilot house and skylight. The manner in which plaintiff did this work and which makes the boat list, or lean to one side, is a breach of its contract with defendants, by which they have sustained damages. The dancehall deck as aforesaid is not constructed according to the terms of the contract; and this construction is in violation of the contract between plaintiff and defendants, who contracted to remodel said boat, so as to make a first-class job of it.

The back stairway on said boat is not constructed properly, nor is it constructed according to the terms of the contract. This stairway has a six-inch tread and a ten-inch rise, which makes it almost impossible to go up or come down said stairway in safety; the stairway is not constructed according to the terms of the contract, which provided that it should be so constructed as that passengers might go up and come down the same with a reasonable degree of safety. Moreover, this stairway has no rails placed along the side thereof which prudent construction requires, and which is always done on every properly constructed boat, and which plaintiff contracted to place there. That construction renders the stairway very unsafe, and makes the work worthless.

The plaintiff broke and violated its contract in the construction of the hurricane deck, or pilot house deck, it agreed and contracted to paper this deck with tar paper and to do so in a skillful manner, but it wholly failed to do so.

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Where the hog chain braces pass through this deck the canvas jackets are not constructed in the proper way and the result is that rain finds its way down to the decks below, and in this faulty construction plaintiff broke and violated its contract with defendants, for it agreed to construct them in a skillful and proper manner. The joists on the skylight of this deck are improperly and unsafely constructed as already averred and will not admit passengers on this deck. The tie rods placed on the joists or carlings are improperly placed and not placed according to the terms of the contract. The office of the tie rods is to carry a load on top of the hurricane deck and they are not so constructed as to prevent them from jumping out of what is called "the hangers," and this renders it very unsafe, and it is not constructed according to the terms of the contract. What is called the chamber on the hurricane deck is improperly constructed; one of the offices of the chamber is to assist in throwing water off the top deck of the boat; but the manner in which plaintiff has constructed it leaves the water to lay on the deck around the pilot house where the rudder or ropes lie, and thus constructed, the water leaks down over the pilot house floor, which is not constructed according to the terms of the contract and is of faulty and unmechanical construction.

The railing around the hurricane deck is most defective and was not built according to the terms of the contract; it is only about twelve inches high, when it should have been two feet and six inches high; it is frail, when it should have been made of substantial material, as agreed in the contract and this in order to protect passengers on the hurricane deck. The hog chains are not properly constructed, nor constructed according to the terms of the contract. These hog chains are on the hurricane deck. The wheel chains connect with the hog chains, the office of the former is to hold the boat together and keep it intact; the wheel chains are two feet and four inches out of line, when they should have been in exact line with the hog chain braces. The direct effect

of this is to retard speed and lessen the power of the boat; and, moreover, to pull the hog chains off of the braces and endanger the safety of the boat. This is the manner in which plaintiff constructed these hog chains and is in violation of its contract, because defendants say plaintiff agreed to do all this work contracted to be done, in a skillful and proper manner, which it failed to do and has broken and violated its contract as already set out, to the great damage and injury of defendants.

Further answering, defendants say plaintiff broke and violated its contract in the following particulars:

It failed to build a safe or prudent floor on the hurricane deck; this deck has already broken through at the pilot house and around the smoke stacks, hog chains, and at the openings in the stairway, all of which was unskillfully constructed and in violation of the contract. As a result of this unskillful construction water leaks down to the boiler deck, and makes the boat wet on the inside; the lumber used in the hurricane deck is not good, nor according to the terms of the contract; it is knotty, unseasoned, and not planed, but just in the manner that it left the circular saw. The hurricane deck which plaintiff contracted to build strong enough to permit persons to promenade on it is not strong enough for that purpose; it is not strong enough to hold people walking on it, and a failure to so construct it was a breach of plaintiff's contract with defendants.

If a crowd should assemble on this hurricane deck, the result would be that it would collapse or fall down; it would fall down on the dance floor, or main deck, and result in the injury and probable death to the persons assembled on this dance floor. Plaintiff further broke and violated its contract in this: it contracted it would properly construct or hang the life boats on the hurricane deck. The life boats, together with the davits on which they are hung to launch them, are improperly and unskillfully constructed. The davits are made of hollow pipe. They should have been made according to contract, from solid, round bars of iron and gradually

curved, which has not been done. The manner in which plaintiff constructed the davits and life boats renders their operation dangerous and defective. In the manner in which plaintiff has constructed the life boats they can not be swung over the guards of the boat, and to attempt to do so would be calculated to swamp the boat and imperil the lives of the passengers; and this is in violation of the contract between plaintiff and defendants, who expressly contracted "*that the workmanship should be first-class.*"

The pilot house is not constructed in the center of the boat, as plaintiff contracted it should be; it sits over the skylight, which is improper; it is on one side of the boat, as is also the hallway below. The pilot house should have been, according to the terms of the contract, in the middle of the boat. It was not so set, but was set to one side. The effect of this improper construction is to balk the pilot in his steering of the boat and to render the deck below perilously dangerous to those who assemble thereon. The plaintiff contracted to so construct the pilot house and the hurricane deck as to run the water from the top of said boat into the river; this they failed to do, but constructed it so as to let water accumulate on the hurricane deck, as already stated, which renders the boat unseaworthy and to make it dangerous for navigation.

Plaintiff broke and violated its contract in this: that it agreed and contracted with defendants that it would build the smoke stacks in a mechanical and first-class manner; this it failed to do; the smoke stacks are not built in a mechanical manner. To have been built mechanically they should have been set opposite each other, which they are not; and proper construction required that they should have been.

The guy wires that hold the smoke stacks are carelessly, imprudently and unskillfully constructed. They are fastened on straight lines from the band where they take hold on the stack. This leaves the smoke stacks to be blown over and they will be blown over by slight

winds, except as this construction is remodeled and reconstructed.

Referring again to the dance hall, which is fifty-two feet long, defendants say it has no upright support, which renders it an unsafe place for persons to assemble on, and this was and is a breach of the contract between plaintiff and defendants. Defendants have had to rebrace same to make it safe.

The office of the ridge pole in the dance hall is to support the deck above, but plaintiff has so constructed this ridge pole as to afford little or no protection from the roof above and the result is if persons go upon the deck above the dance hall, it is liable to collapse or break in at any moment, and in this respect plaintiff has broken and violated its contract, because it contracted to build said deck strong and secure.

Plaintiff broke and violated its contract further in this: they did not construct it in the manner contracted for and specified in the blue prints furnished to defendants in this: they did not construct the carlings or joists properly. A proper construction of the carlings or joists on the dance floor would have been to place the supports twenty-four inches apart, as shown by the blue prints, 1½ x 3½, 36 inches, center to center; and this the plaintiff has wholly failed to do.

The pilot house, skylight and hallway do not conform to the blue prints as above stated.

Neither does all, or any part of the timbers used in rebuilding conform to grade number, in one or all or any part of the timber furnished; nor is any of said lumber first-class according to contract or was it done in a workmanlike manner.

Defendants say all of the work done on this boat was done regardless of the terms of the contract and agreement between plaintiff and defendants; it is a shoddy job; and an imperfect and unmechanical job, and the defendants can not operate said boat safely nor is it a seaworthy craft; nor does the work plaintiff did on said boat conform in any degree whatever to their said contract.

There are many other items of work alleged to have been done by plaintiff on this boat which are imperfect, unmechanical and in open violation of its contract. The defendants say they have now given as best they can some of the defects, imperfections and unmechanical work done by plaintiff on this boat, and they have endeavored to state some of the breaches of its contract with defendants, but they are not yet able to state fully all of the breaches of said contract; but they rely upon all of the allegations in their original answer, and they plead the same as a counter-claim and set-off herein.

Paragraph 2. Further answering, the defendants say that the plaintiff has broken and violated its contract in this: that it contracted "all lumber and timber used in the rebuilding should be of grade number one common, other material to be first-class, and workmanship guaranteed." The plaintiff has broken and violated its contract as aforesaid, and the boat as it was delivered to defendants is practically of no value. Before they can operate it with any degree of safety, it will have to be remodeled and reconstructed.

Defendants further state that plaintiff mutilated and to a large extent destroyed the wheel of the R. D. Kendall, which they placed on the boat now called the Golden Girl. They reduced its circumference and cut and shortened the paddles, all of which resulted in lessening the speed of the boat and diminishing its strength. And the work plaintiff did on said wheel and the alterations were carelessly and wrecklessly and unskillfully done.

Defendants rely upon and plead each and every affirmative allegation set out in their original answer herein; and they plead and rely upon the counter-claim and set-off therein stated.

They further plead that the work done by plaintiff upon the R. D. Kendall, at present called the Golden Girl, was not in any respect in conformity with the contract, and that plaintiff broke and violated its contract in every respect.

They say the boat as alleged to have been completed by plaintiff was not completed according to the terms of the contract in any respect and that the workmanship thereon was not done or performed according to the terms of the contract; or in a skillful and workmanlike manner; and they plead and rely upon the breaches of said contract by the plaintiff and say they were damaged by said breaches in the sum set up in their original answer and on account of the matters set out in this amended answer, in the sum of five thousand dollars ($5,000.00), which they plead as a counter-claim and set-off.

Wherefore the defendants pray as in their original answer and as in this amended answer and they pray on final hearing for all proper and equitable relief.

SWEENEY, ELLIS & SWEENEY,
Attorneys for Defendants.

F. T. Rounds, one of the defendants, says the statements contained in the foregoing amendment are true, as he verily believes.

F. T. ROUNDS.

Subscribed and sworn to before me by F. T. Rounds this the 14th day of October, 1912.

MARTHA HENRY,
Examiner for Daviess Co., Ky.

BRECKINRIDGE CIRCUIT COURT.

CLOVERPORT FOUNDRY & MACHINE CO., - - *Plaintiff,*

versus

F. T. ROUNDS AND SAMUEL JESSE, - - - *Defendants.*

REPLY TO THE AMENDED ANSWER AND COUNTER-CLAIM.

Comes the plaintiff and for reply to the amended answer and counter-claim, and without waiving its objections to the filing thereof, and without waiving the general demurrer filed thereto, denies that the defendants are not mechanics or ship builders or ship carpenters, or when they filed their original answer that they were without accurate information so as to state in detail any alleged items of unskillful workmanship performed by the plaintiff on the boat R. D. Kendall, and plaintiff denies that there were any items of unskillful workmanship done by it thereon, and it denies that since the filing of their original answer they have caused the work done by the plaintiff on the "Golden Girl" to be carefully examined by a competent ship carpenter, or that they are now able to state correctly many, or any, items of the work done by plaintiff which was unskillfully done, or not done in accordance with the terms of plaintiff's contract, or which was so unskillfully, or at all, done as to make said boat unseaworthy or to render it practically worthless.

Plaintiff denies that it broke or violated its contract as follows, or at all. It denies that the work done on

said boat was not done according to contract, or that it was done or performed in an unskillful manner, or that it constituted or was a botched job in manner or form, as follows: They deny that in reconstructing the front stairway on this boat they did the work improperly. They deny that the work in reconstructing the stairway was imperfect or unskillful. They aver that in constructing said stairway that they had a certain place to commence and a certain place to end and that in consequence thereof they made the risers 10 inches and the tread 7½ inches for the reason above stated, because they aver that they had to and were compelled to follow the outlines of the old boat, the R. D. Kendall, and that the lines thereof only permitted them to construct the steps in the manner as they did construct them. They deny that the stairway thus constructed is dangerous either to descend or to ascend by passengers going onto or off the boat. They deny that the opening above the passageway is of the height that could be made on the old R. D. Kendall, but they deny that even with its height that it is dangerous for passengers to go onto or off the boat, or that said construction is unskillful in the first degree, or in any degree.

Plaintiff denies that the risers on the stairway are not properly constructed, or that they are not nailed or fastened, or that this is very imperfect or unmechanical construction. They aver that the angle at which stairway is constructed is the only angle that it could have been reconstructed on the old R. D. Kendall, all of which was known to the defendants at the time they turned the old R. D. Kendall over to the plaintiff for the reconstruction. They deny that said stairway is too steep for safety. They deny that the only work done by them on the hull was to put some planking on each side thereof, or that this work was not skillfully or properly done, or that it was not properly caulked or made water-tight.

Plaintiff denies that the work done by it on the hull of the boat was not of more than $500.00 in value, and they deny that said work was not done according to con-

tract, or that the manner in which it was done is not worth to exceed $250.00, or that the hull is defective or not according to contract in the following particulars, or any particulars: Where outriggers pass through the planking of the boat they are improperly sawed, or that there is an opening on each side of the hull through which you can see daylight. They deny that said opening was not made water-tight in order to make it a first-class job. They aver that they made said openings water-tight and that the job of work thereon was first-class and in accordance with the contract.

The plaintiff denies that the caulking on the hull was improperly done, or that when said boat was taken out of its possession that the boat did leak. They deny that the coamings around the hatches were constructed in a most unworkmanlike manner, or that they were so constructed as to let the water run down onto the deck. They aver that said coamings around the hatches were properly constructed and ran the water in the manner that it should run when said boat was taken out of their possession in January, 1912. They deny that the work done about these hatchways on the deck aforesaid was so unskillfully done as to make the boat unsafe for navigation, or so as to render it unseaworthy or to make the boat a very shoddy constructed craft, or of little value.

Plaintiff avers that the hurricane deck was built in strict accordance with the contract; that the defendant told them to make the hurricane deck of light material; that they did not want it made of heavy material, because it was not expected that passengers should ride thereon, because the said boat on account of the old hull being the dimensions it was would not permit of the hurricane deck being constructed so that passengers could ride thereon because of its likelihood to be top heavy, but plaintiff denies that the hurricane deck was so constructed that no one can go upon it with safety or that it is an injury or damage to the defendants, or that it is a breach of the contract between plaintiff and defendants, or that by reason of the construction of said hurricane

deck in the manner that it was constructed that the defendants have been damaged. They deny that water flows through the openings on said deck down to the other decks of the boat, or that such tends to make it unsafe or to sink, or that the work was unskillfully or improperly done by plaintiff, or not done in accordance with the contract. They deny that the planking placed on the boiler deck is doubly as wide or at all wider than prudent construction authorizes, or as plaintiff contracted to lay it, or that as a result of this the planking warps or leaks onto the lower deck, or that this construction was or is unskillfully or carelessly done. They deny that the boiler deck was not constructed according to the terms of the contract, or that the planks thereon should not have been more than 4½ inches wide, or that they placed planks therein more than nine inches wide, or that the planks should have been laid in white lead, or that plaintiff broke or violated this part of its contract because it did not lay said planks in white lead, or use plank so wide that it can't be made safe, or that the work done on this deck is unskillful or in violation of the contract, or is practically of no value at all.

Plaintiffs deny that the carpenter work done on the boiler deck floor was not properly done or that the dance hall on said deck was not laid in accordance to the terms in the contract, or that they should have been laid in narrow planks not more than two or two and one-half inches wide, or that the planks placed there by them are more than 4 inches wide, or that in placing said planks there it broke or violated the terms of its contract, or that the manner in which they placed said planks on said floor are in violation of the terms of its contract. They deny that it is unsafe for large numbers of persons to dance on it at the same time, or that it broke or violated its contract in that or any respect, or that said dance floor is not safe for large numbers of persons to dance on at the same time, or thereby defendants have been greatly injured or damaged.

Plaintiff denies that it failed to place proper stanchions or upper upright supports over the boiler deck or dance hall deck, or that its construction of the roof to this deck is a violation of its contract, or was not done or performed according to the terms of the contract, or that the ridge pole over the dance hall or main deck is not properly or safely supported, or were not constructed according to terms of the contract, or that the rail on the outside of this deck was not built according to the terms of the contract, or that it is weak, or imperfect, or insecure, or that the manner in which plaintiff constructed the railing or other work gives the boat a list, or makes the boat lean to one side, or that this is true as to the hull or any construction done by plaintiff on said boat, including the pilot house or skylight. They deny that the boat lists or leans to one side, or that the dance hall deck, as aforesaid, is not constructed according to the terms of the contract, or that this construction is in violation of the contract between plaintiff and defendants.

Plaintiff denies that the back stairway on said boat is not constructed properly, or that it is not constructed according to the terms of the contract. They deny that its tread or rise makes it impossible or almost impossible to go up or come down said stairway in safety, or that said stairway is not constructed according to the terms of the contract. They deny that prudent construction demanded that rails should be placed along the sides thereof, although they aver that rails were placed along the side thereof, or that the construction renders the stairway unsafe or makes the work worthless. It denies that it broke or violated its contract in the construction of the hurricane deck, or pilot house deck, or that it failed to paper the deck as it contracted to do, or that it was not done in a skillful manner, or that where the hog chain braces pass through this deck the canvas jackets are not constructed in the proper way, or that the result is that rain finds its way down to the decks below, or that it broke or violated the contract in this manner, or that the skylight of this deck is improperly or unsafely con-

structed, or that the tie rods placed on the joists or carlings are improperly placed or are not placed according to the terms of the contract, or that said tie rods are not so constructed as to prevent them from jumping out of what is called the "hangers," or that it renders it imperfect, or that it is not constructed according to the terms of the contract, or that what is called the chamber on the hurricane deck is improperly constructed, or that it leaves the water to lie on the deck around the pilot house where the rudder or ropes lie, or that thus constructed the water leaks down over the pilot house floor, or that it is not constructed according to the terms of the contract; or that it is of faulty or unmechanical construction, or that the railing around the hurricane deck is defective, or was not built according to the terms of the contract, or that it should have been two feet and six inches high, or that it is frail when it should have been made of substantial material, or that the hog chains are not properly constructed or constructed according to the terms of the contract. They admit that the wheel chains are out of line, but they were left out of line at the instance of the defendants. They deny that that result of this is that the speed or power of the boat is effective, or to pull the hog chains off of the braces, or to endanger the safety of the boat, or that said construction of said hog chains is in violation of its contract. They deny that they failed to do the work in a skillful or proper manner, or that the defendants have been damaged by reason of any alleged violations of the contract in any particular.

Plaintiff denies that it failed to build a safe or prudent floor on the hurricane deck, or that it has broken through around the pilot house, smoke stack, hog chains, or at the openings in the stairway. They aver that if such is true that it is caused by the abuse to which the defendants have subjected the boat since they took possession of it, and it denies that any of the work is unskillfully done or in violation of the contract, or that as a result of any unskillful construction water leaks down to the boiler deck, or makes the boat wet on the inside,

or that the lumber used in the hurricane deck is not good or according to the contract, or that it is knotty, unseasoned, or not planed, or that it is as it left the circular saw. It denies that it was intended that the hurricane deck should be built strong enough for persons to promenade thereon. It denies that it is not strong enough to hold people walking on it in any reasonable number, or that it in this particular breached its contract with defendants. It denies that if persons should assemble on the hurricane deck that it would collapse or fall, or result in the injury or probable death to persons assembled on the dance floor.

Plaintiff denies that it further broke or violated the contract in failing to properly construct or hang the life boats together with the davits, or that they are improperly or unskillfully constructed. It admits that the davits are made of hollow pipe, which it avers to be proper. It denies that it did not make said davits in accordance with contract, or that solid round bars of iron were contracted to be used therein, or that such is proper.

Plaintiff denies that the manner in which the davits and life boats are constructed renders the operation dangerous or defective, or that they can't be swung over the guards of the boat, or that to do so would be calculated to swamp the boat or to imperil the lives of the passengers, or that this is in violation of the contract between the plaintiff and defendants. It denies that the pilot house is not constructed in the center of the boat, or that it sets over the skylight, which is improper, or it is on one side of the boat, or that the hallway below is also on one side of the boat, or that the pilot house should have been according to the terms of the contract in the middle of the boat, or that it was not so set, or that the effect of the construction of the pilot house as it is to balk the pilot in his steerage, or to render the deck below perilously dangerous to those who assemble thereon, or that the plaintiff violated the contract in any particular, or that it constructed it so as to let water accumulate on the hurricane deck, or that thereby the boat is made unsea-

worthy, or is made dangerous for navigation, or that the smoke stacks are not built in a mechanical manner. It avers that said smoke stacks were set where they should have been set. It denies that the guy wires that hold the smoke stacks are carelessly, or imprudently, or unskillfully constructed, or that the smoke stacks are not constructed in any such a manner that they could be blown off by any ordinary winds. It denies that any construction or lack of construction in the dance hall renders it unsafe for persons to assemble, or that it violated the contract in any particular with reference to said dance hall, or in any other particular. It denies that said dance hall is liable to collapse or break at any moment, or that in this respect said plaintiff has broken or violated its contract. It avers that it is strongly and securely constructed. It denies that it did not construct it in the manner contracted for or specified in the "blue prints" furnished to the defendants, or that it did not construct the carlings or joists properly, or that it failed to place the supports at the proper places, or that the pilot house, skylight, or hallway, does not conform to the "blue prints" above stated. It denies that all nor no part of the timbers used in rebuilding conform to grade number in one or all, or any part of the timber, furnished, or that it is not first-class according to contract, or that it was not done in a workmanlike manner, or that all or any of the work done on this boat was done regardless of the terms of the contract or agreement between plaintiff and defendants, or that it is a shoddy job, or an imperfect or unmechanical job, or that said defendants can not operate said boat safely, or that it is not a seaworthy craft, or that the work plaintiff did on said boat does not conform in any degree whatever to the said contract.

Plaintiff denies that there are many other items of work alleged to have been done by plaintiff on this boat which are imperfect, unmechanical or in open violation of its contract.

Replying to Paragraph Second, plaintiff denies that it has violated its contract in the character of lumber

used or the workmanship done, or that the boat as delivered was of no value, or that before they can operate it with any degree of safety it will have to be remodeled or reconstructed.

Plaintiffs deny that it mutilated or to a large extent destroyed the wheel of the R. D. Kendall, or that it reduced its circumference, or cut or shortened the paddles, or that in consequence of anything that it did the speed or strength of the boat is diminished, or that the work done on the wheel was carelessly or wrecklessly or unskillfully done. It denies that the work done by plaintiff on the R. D. Kendall was not in any respect in conformity with contract, or that plaintiff broke or violated its contract in any respect. It denies that said boat was not completed according to the terms of contract, or that the workmanship was not done or performed according to contract, or that it was not done in a skillful or workmanlike manner, or that by reason of any of the alleged previous contract, or for any other reason, that defendants have been damaged in the sum of $5,000.00, or in any other sum.

Replying further, plaintiff avers that said boat was taken from their possession under orders of this court on the —— day of January, 1912, and that it has not seen or inspected said boat since that date, and that it has no knowledge of the manner in which the defendants have treated said boat or what they may have done to it since said date, but they aver that said boat was in a first-class condition and in every respect conformed to its contract at the time possession was taken thereof. They aver that said boat has been used by the defendants in excursions since they have had it in their possession.

Wherefore plaintiff prays as in its petition.

CLAUDE MERCER,
Attorney for Plaintiff.

COURT OF APPEALS OF KENTUCKY.

June 5, 1914.

FRANK J. ROUNDS & S. A. JESSE, - - - *Appellants,*

vs. APPEAL FROM BRECKENRIDGE CIRCUIT COURT.

THE CLOVERPORT FOUNDRY & MACHINE COMPANY, - - - - - - - - - - *Appellee.*

OPINION OF THE COURT BY JUDGE MILLER, AFFIRMING.

This is an appeal by Rounds & Jesse, of Owensboro, from a judgment recovered against them in the Breckenridge Circuit Court for $5,668.65 by the Cloverport Foundry & Machine Company for the reconstruction of a towboat formerly known as the "R. D. Kendall," but subsequently rechristened the "Golden Girl." The judgment also dismissed appellants' counterclaim.

Representatives of the parties having reached a verbal agreement it was reduced to writing, in the shape of the following letter or proposition from the appellee to the appellants, and accepted by the latter:

"Cloverport, Ky., March 23, 1911.

"Messrs. Jesse & Rounds,
Owensboro, Ky.

"Gentlemen: On yesterday we mailed you blue prints giving specifications in detail for remodeling and rebuilding and converting the 'R. D. Kendall' into an excursion steamer along the lines suggested and agreed upon between us. To all intents and pur-

poses, these cover the work to be done from the deck up, including the docking of the boat, recaulking, one new stack and lengthening and changing old stack to conform with new one, turning boiler around, taking out engines and putting in the Parker engines and such machine work necessary to be done on same to put in first-class condition, building new wheel, mast poles, raising the bow, new cylinder timbers (any work other than turning around and resetting boiler which may show up to be extra), all necessary ropes for masts and in fact everything necessary to be done to make the job first-class in workmanship, at our estimate of Sixteen Hundred, Ninety and 66/100 Dollars ($1,690.66).

"This price includes everything to be done as shown by the blue prints, including the docking and recaulking the hull as above stated, except any extra work we might find in the boiler and any new work we may have to put in the hull which we can not see or make an estimate on, but all extra work to be done by us to complete the job and put same in good running condition and acceptable to the U. S. Steamboat Inspectors not to cost over Two Hundred Dollars ($200.00); said extra work, if any found, and material used we agree to do and furnish at the actual cost therefor, plus ten per cent.

"All lumber and timbers used in the rebuilding to be of grade No. 1 common. Other material to be first-class and workmanship guaranteed.

"We have endeavored to make everything as clear to you as is possible to make on paper, having worked very diligently in getting up our plans and specifications, and while they are, practically speaking, complete, there is quite a number of little things not shown on them which we thought entirely unnecessary to spend more time in enumerating them, as our proposal carries with it all of these small items to complete the job. In short, we do the work for the sum named, $1,690.66 and guarantee that

such extra work as may have to be done that we can not see or figure on shall not cost you exceeding the sum of Two Hundred Dollars ($200.00).

"We are anxious to get the boat here and get to work on it and shall complete same at the very earliest possible date, which should not be longer than abount June 1st to 10th, barring too much weather unfit for work.

"Will be glad to answer any further inquiries you may wish to make about the work to be done which we now believe all parties understand fully in a general way.

"Thanking you for past favors, we are

"Very truly yours,

"Cloverport Foundry & Machine Co.

"By Marion Weatherholt."

Under this contract the boat was taken to Cloverport about April 1st and docked, preparatory to beginning the work.

While the boat was on the dock and before any work had been done, it was examined by a United States steamboat inspector, who expressed the opinion that while the proposed repairs would be sufficient for the boat to pass the Government inspection, they would make the boat sea-worthy only for a short time, and that further repairs would be necessary within one or two years thereafter.

This information having been communicated to appellant Rounds, he went to Cloverport in May, 1911, and after examining the boat, Pate, appellee's foreman, says it was agreed between them that repairs additional to those contemplated in the contract of March 23, 1911, should be made and that it would be necessary to rebuild the boat from the bottom up, to make a good job of it. According to Pate, he and Rounds examined the boat together and agreed that a new hull was necessary; that Rounds asked Pate what this new work would cost and Pate replied that while he was unable to say definitely,

it looked like it would cost about $3,500.00, and the best way he could handle the job would be to keep an accurate account of the labor and material and then add a reasonable per cent for appellee's trouble. Pate says Rounds agreed to the proposition and directed Pate to rush the job as fast as he could. Pate describes the difference between the work contemplated under the contract of March 23, 1911, and as it was finally done under the verbal contract of May, by saying it was changed from a patch-job to a new job, and that the appellee did all the work called for under either contract.

Pate further testifies that later, during the last week of August, 1911, the contract was again extended by an agreement which required the appellee to take off the old cabin and build a new cabin, with the understanding that appellee was still working under the May contract last above specified as to compensation; and that while no time was specified for its completion, the work was to be done at the earliest possible date.

The work upon the boat was completed in December, 1911, at a cost, according to the appellee, of $5,668.65. In the meantime the appellants had, on October 2, 1911, paid the appellee $500.00 upon account; but they having failed to pay any further sum, the appellee having theretofore filed a verified statement of lien in the county court clerk's office, filed this action on February 1, 1912, and levied a specific attachment upon the boat to secure its lien, under Section 2482 of the Kentucky Statutes. The appellants thereupon released the boat by executing the bond provided by Section 2484 of the Kentucky Statutes.

Before answering, the appellants, by a special demurrer, raised the question of the jurisdiction of the Breckenridge Circuit Court to entertain this action. The objection to the jurisdiction was based upon the contention that the claim sued on, and the lien asserted by the appellee, were of exclusively admiralty cognizance, and that the jurisdiction in all such cases was in the admiralty courts of the United States, and not in the State courts. The plea to the jurisdiction was overruled, whereupon the defendants answered.

The answer and counterclaim is in six paragraphs. After denying the allegations of the petition and the items of the account sued on, and controverting appellee's right to a lien, the fourth paragraph of the answer alleged that the work done by appellee was done under the written contract of March 23, 1911, and not otherwise.

The fifth paragraph alleged that all the work charged for in the account sued on was contracted to be done and performed for the sum of $1,690.66, plus $200.00 for extra work; and that on October 2, 1911, appellants had paid appellee $500.00 by their check on the Owensboro Banking Company which recited on its face that the payment of said $500.00 was for reconstructing the "R. D. Kendall" under the contract of March 23, 1911; and that having accepted said check the appellee was estopped to claim it had any other or additional contract with the appellants, or that appellants had ever agreed or promised to pay appellee any sum except as specifically stated in the written contract of March 23, 1911.

The sixth paragraph charged that appellee failed to comply with its contract of March 23, 1911; that there was no other contract between the parties, and that the work contraced to be done by appellee and all the work done by it was fully covered by that written contract.

By way of counterclaim, the answer further alleged that the boat as reconstructed was not sea-worthy; that appellee did not construct the hurricane deck according to the contract, whereby appellants were damaged in the sum of $500.00; and that appellee further broke its contract by failing to complete the work within the time prescribed by the contract, whereby appellants had lost various items of business aggregating $3,234.51.

By an amended answer and counterclaim, appellants set out more in detail, and with greater particularity, the instances wherein appellee had broken and violated its contract, specifying the front stairway, the hull of the boat, the out-riggers, the caulking of the hull and the hurricane deck, as some of the instances in which the work had been imperfectly and unskillfully done.

The reply admitted the plaintiff entered into the written contract of March 23, 1911, but denies that all the services rendered by the appellee were performed under that contract; and while admitting that the "R. D. Kendall" was delivered to the appellee under said written contract, to be remodeled and rebuilt according to the terms thereof, the reply further alleged that the said written contract was subsequently abrogated, and that in lieu thereof an additional contract or contracts were entered into in May and August, 1911, as above indicated, for additional repairs.

Upon the subject of the May contract the reply said:

> "The plaintiff telephoned to the defendants, and the defendant, J. T. Rounds came to Cloverport, Ky., and after looking over the boat and being told of the suggestions made by the said government inspectors, the said J. T. Rounds then and there abrogated the written contract filed with the petition and in lieu thereof made the following agreement, which agreement was acquiesced in by the plaintiff, to-wit: That all the work as specifically set forth in said written contract should be done, but in addition thereto all planking and all timbers were to be made anew in said boat; all deck timbers were to be made of new timber, and to relay all of the deck; that the plaintiff was to be paid therefor the actual cost of all labor and material furnished, plus ten per cent, and that said company, the plaintiff, was to keep strict account of all material and labor to be furnished, to be paid for when the boat was completed, and it was then conjectured that said boat could be completed under said contract about September, 1911."

In setting up the second supplemental contract of August, 1911, the reply further alleged that after appellee had nearly completed the hull of the boat under the May agreement, the appellants, upon having inspected the boat, suggested that the cabin should be made anew

to correspond with the newness of the other parts of the boat, and thereupon ordered the appellee to build the cabin anew on the same terms and conditions as provided in the May contract, except as to the time of completion; that it was then conjectured that the said boat could be gotten ready for delivery in December, 1911, with the new cabin as above indicated; and that appellee then agreed to reconstruct the cabin anew under the terms of the May contract, as extended.

Appellants' demurrer to the reply was overruled. They insist, however, that the reply is an abandonment of the cause of action stated in the petition, in that it attempts to set up three distinct causes of action, no one of which, it is claimed, is even remotely mentioned in the petition; and that the court erred in giving a judgment under the pleadings.

For a reversal appellants rely upon three principal grounds: (1) that the State court had no jurisdiction because the demand sued on arose out of a maritime contract which could only have been enforced in the admiralty courts of the United States; (2) that no judgment could properly have been entered where the cause of action upon which it was entered, is stated only in the reply; and (3) that the judgment is against the weight of the evidence.

We will consider these questions in the order named.

1. Sections 2480 to 2486, inclusive, of the Kentucky Statutes, giving a lien upon water craft, read as follows:

> "2480. Except the captain, all the officers and hands employed on board a steamboat or other brig, schooner, or sloop or model barge, shall have a lien on the boat or vessel, or engine, tackle, furnishing and apparel, for their wages, whether contracted for or earned in or out of the State, with priority therefor over any other debt due from the owner of the boat or vessel, and over all other liens thereon. Mechanics, tradesmen and others shall also have a like lien for work, supplies, materials, stores and provi-

sions done or furnished on or toward the building, repairing, fitting, furnishing or equipping the boat or vessel in this State, with priority therefor over any other debt or debts of the owner, except to the officers and hands, and over all other liens thereafter created. When so done or furnished out of this State, there shall be a like lien therefor, which shall have precedence next after that given when done or furnished in this State; but if done or furnished out of the State, subsequent to that done or furnished in this State, the liens shall be joint and equal.

"2481. A steamboat or other vessel in the last section named, and owner, shall also be liable to indemnify the party injured for any damage unlawfully done by her to any other boat, vessel or river craft, or to any other property, through the willful or negligent conduct of her officers or crew, and for any other damage willfully or negligently committed by her officers or crew while acting for her as such.

"2482. The lien given in Section 2480, and the liability mentioned in Section 2481 of this article, may be enforced by attachment from the court having jurisdiction.

"2483. Before issuing an attachment under this article, bond, with good surety, shall be given to the owners of the boat, by that designation, to indemnify for all damages and costs incurred thereby, if it shall appear that the attachment had been wrongfully obtained, on which suit may be brought and recovery had by any person injured by the attachment; but nothing herein shall vitiate a bond taken in any other mode.

"2484. The boat, vessel or other property attached under this article may be released upon the execution of bond, with good surety, to the plaintiff, in the penalty to be named in the order for the attachment, conditioned to have the property attached forthcoming, if the court shall so order, or otherwise perform the decree of the court.

"2485. All persons having liens under this article against any boat or vessel may unite in a suit to enforce the same; and any person having a lien, who is not so united, may, by petition filed by leave of court, become a plaintiff in any suit pending to enforce a lien without the issuing of any other or additional process on said petition.

"2486. The liens given by this article shall not be enforced against a purchaser without actual notice thereof, unless suit be instituted within one year from the time the cause of action accrued, or unless notice thereof be indorsed on or attached to the enrollment of the boat or vessel."

As heretofore stated, this action was brought under the foregoing provisions of the statutes, although no specific statute is referred to, or relied upon, in the petition. The petition states the facts, however, which bring the case within the terms of the statute above quoted.

The statute, *supra*, does not pretend to give a maritime lien; it could only give a lien to non-maritime causes of action, or ordinary statutory liens.

We have, therefore, for decision, this question: Is the contract sued on and the lien enforced a maritime contract and lien? If they are, the State court was without jurisdiction.

In 26 Cyc., 751, a maritime contract is defined as follows:

"A maritime contract is one relating to a ship as an instrument of commerce or navigation when tending to facilitate its use as such, or in connection with its use as such. A maritime lien, however, does not arise out of every maritime contract. Many such contracts give only a personal right of action against the vessel owner or master, without giving the proprietary interest in the *res* which constitutes the maritime lien. In order for the lien to arise, the service must in some way be brought into relation with the ship itself and tend to facilitate her use as

an instrument of commerce. For example, a contract of marine insurance, although maritime, gives no maritime lien; for it merely benefits the owner and does not benefit the vessel itself."

The same volume, on page 769, in speaking of the validity of local statutes giving a lien, says:

"When the cause of action is maritime by nature, although not vested with a lien under the general principles of admiralty law, a local statute can superadd a maritime lien, if the vessel against which it is asserted is within the range of State legislation; and such lien is enforceable in an admiralty court by a proceeding *in rem*. In other words, a local statute can add to a cause of action essentially maritime a lien which it did not have before, as such legislation does not affect the general bounds of admiralty jurisdiction; and the Federal court, finding a subject maritime by nature, will enforce it without inquiring into its origin, just as it would do in the case of a common-law or equity cause of action created by a State statute. But a State statute can not create a maritime lien as incident to a cause of action not maritime by nature, for in such case it would be in the power of the States to enlarge the general scope of the admiralty jurisdiction recognized in the Federal Constitution. Hence a State can not annex an admiralty lien to a contract for the original construction of a vessel, as that is not under the decisions, maritime by nature, and a State can not change its nature. But as the power of the State in this regard is limited simply by the admiralty clause of the Federal Constitution, it follows that it is free to annex liens to non-maritime causes of action, such liens being ordinary statutory liens and not maritime liens. For this reason it can give a lien enforceable in its own courts on a contract for the building of a ship."

And, again, on page 770 of the same volume, the author in speaking of local statutes which give common-law remedies, further says:

> "But although a State can not confer on its courts jurisdiction over a proceeding *in rem*, it can give them jurisdiction over suits against the master or owners. And it can annex to such suit a process of attachment. The proceeding *in rem* which is forbidden to the State courts is a proceeding against the vessel by name as the real defendant in which the vessel itself is judged and sentenced. A proceeding against the owner is not made a proceeding *in rem* by the fact that it is accompanied by an attachment; for such an attachment is a mere incident to a personal suit, and a mere means of reaching the owner's interest; and in it only his title can be sold, and not a clear title to the property itself."

This is not a new question in this court; on the contrary, the jurisdiction of the State courts in cases of this character has been repeatedly invoked, and sustained. The common-law jurisdiction, with the common-law remedies, are expressly saved to the State courts by the judiciary Act of Congress of September 24, 1789; the judicial power of the United States extending only to cases of admiralty and maritime jurisdiction. This distinction is clearly pointed out in the decisions of this court.

Steamboat Hyatt and Owner v. Reitz & Haney, 4 Bush, 395, was a suit in equity against the owner of a steamboat for boilers furnished to the boat and repairs of its engine under a special contract made with the owner of the boat. Claiming a lien on the boat, the petition sought a judgment *in personam* and also *in rem*. In that case the contract was made at Evansville, Ind.; appellant's domicile was in Kentucky; and his boat running on the Ohio River, was attached at Smithland, Ky., on that river.

In affirming the judgment of the circuit court which rendered a personal judgment against the owner and enforced the lien on his boat, this court said:

"The only question presented by this appeal is whether the contract was technically maritime, and whether, therefore, the State or Federal court had jurisdiction to enforce it.

"Maritime contracts made on the sea or on any of its tributaries, not within the jurisdictional limits of any State, always operate *in rem;* and contracts for repairs or supplies of a ship or boat, at the instance of the master only, and not in its home port, are made, *ex necessitate,* on the credit of the vessel, and, therefore, imply a lien on it. But when the contract is made in the home port, or by the owner himself, there or elsewhere, it is presumptively made on his personal credit alone, and does not imply a lien on his vessel; and this latter class of contracts are not, in the constitutional sense, maritime, so as to give jurisdiction to the Federal courts, but all depend on the common law, and are remediable in State courts, according to the local laws, which guide and govern them. To sustain these positions, citations of authorities, which are abundant and uniform, would be unnecessary supererogation."

This doctrine has become so well established by the decisions of both the Federal and State courts, including the decisions of this court, that it is only necessary to refer to the cases.

See Stewart v. Harry, 3 Bush, 438; Marshall v. Curtis, 5 Bush, 607; Rake v. The Owners of the Steamboat Potomac, 6 Bush, 25; Digby v. Kenton Iron Co., 8 Bush, 166; U. S. Mail Line Co. v. McCracken, 17 K. L. R. 1111; Johnson v. Westerfield's Admr., 143 Ky. 15; Schoonmaker v. Gilmore, 102 U. S. 118; Iroquois Transportation Co. v. Delancey F. & I. Co., 205 U. S. 354.

We are therefore forced to the conclusion that the contract sued on in this action was not a maritime contract, and that the Breckenridge Circuit Court had jurisdiction of the action thereon, including the enforcement of the statutory lien.

2. In support of their contention that the judgment was improperly entered because, as it is claimed, the causes of action are stated only in the reply, appellants rely upon Sections 98 and 101 of the Civil Code; Spalding v. Alexander, 6 Bush, 160; Spiess' Admx v. Bailey, 130 Ky. 279, and Stone v. Kelley, 143 Ky. 135.

The argument is, that since the Code requires the cause of action to be set forth in the petition, and Section 98 of the Code provides that a reply may only contain (1) a traverse; (2) a statement of facts which constitute an estoppel against, or an avoidance of a set-off, counterclaim or defense stated in the answer; (3) a counterclaim against a set-off, and (4) a cross-petition, a new cause of action can only be set up in an amended petition; and that when it is set forth in the reply it constitutes a departure in the pleadings, which is prohibited by Section 101 of the Code. The argument is sustained, in its general outline, by the authorities cited; they do not, however, fully cover the case we have before us. In the Spiess case the new cause of action was set up in the reply only, and no issue having been made by a rejoinder or otherwise, a default judgment was taken against the defendant. The opinion clearly shows that emphasis was laid upon the default feature of the judgment, and that it was reversed for that reason. In the Spalding case and in the Slone case, *supra,* the rule was applied in clear cases of departure; neither case was reversed, however, for an error in misapplying the rule, or at all.

The petition in this case declared upon a contract made "on the ——— day of ————, 1911," by which appellants employed appellee to repair and rebuild the steamboat "R. D. Kendall" for the sum of $5,668.65, as shown by the itemized account filed with the petition, the sum claimed being the full amount claimed under the three employments of March 23d, of May, and of August, 1911. The answer, having relied exclusively upon the contract of March 23d, and denying that any work was done under any other or different contract, the reply

set out specifically the full agreement as originally made on March 23d, and as extended in May and in August, and under which the appellee claimed $5,668.65, as in the petition.

It should not be overlooked that the contract of March 23d, provided for extra work, and that it should be paid for at the cost price, plus ten per cent, for profit, and that the extended or new contracts of May and August were upon the same basis. Strictly speaking, therefore, it can not be said that the reply sets out a new or different cause of action; it is, in substance, merely an amplification and reiteration of the petition. And, while it would, perhaps, have been better pleading to present those matters in an amended petition, it clearly appears that appellants were not misled by the inadvertence of the pleader. The appellants controverted the reply and took elaborate proof upon the issue thus made; and although this was done only after appellants had exhausted their remedies in seeking to correct what they deemed an error of pleading, we refer to the fact in order to show the radical difference between this case and the Spiess case, *supra,* where the judgment went by default.

The purpose of all good pleading is to make plain the issues between the parties; and when that has been done, and the case has been tried upon the merits, the courts will be slow to reverse the judgment upon a technical view of the pleadings.

In Ruffner v. Ridley, 81 Ky. 171, we said:

> "Counsel for appellant also insist that this court can not consider the effect of the failure of title to the one acre of land on which the dwelling is situate, because it was first set up in the reply, whereas it should have been by amended petition. To this we say that both the court below and the parties treated the reply as an amendment to the petition, and acted upon it on the trial and in the decree as such, and we will therefore so treat it, as the rights of the parties have been fairly and fully considered under it."

Regardless of any error, therefore, that may have been committed by the pleader in this case, it is apparent that appellants were not prejudiced thereby; and that being true, there is no reversible error.

3. Is the judgment against the weight of the evidence?

Upon this issue the proof is radically contradictory. The testimony of the appellee's witnesses, Weatherholt, Pate, McKaughan and May, tends to prove the contract as claimed by the appellee; and that all the labor and material shown by the itemized account filed, and aggregating $5,668.65, were supplied by the appellee in the rebuilding of the boat. Upon the question of the amount of labor and material furnished, and its cost and value, there is no testimony directly contradicting appellee's proof. Upon this subject appellants have confined themselves to the expert witnesses, Wood and Landgrebe, who testified from an inspection of the boat some months after it had been finished. On the other hand, appellant Rounds, is positive in his statement that the only contract appellants made was the original contract of March 23, 1911, and that plaintiff did no extra work beyond that called for by that contract, which aggregated about $1,900.00.

Furthermore, he says the hurricane roof was weak and unfit for use by large crowds, and that he never knew anything of the extra work that had been done upon the boat until about the time this suit was filed, in February, 1912. He admits, however, that he was in Cloverport on May 25th, when he saw Pate and talked to him, and was there again on June 15th; and on both of these occasions he saw the boat under construction. Jesse was in Cloverport on August 29, 1911, and he also saw Pate and talked with him; and he was there again in June or in the early summer. Jesse was upon the boat and talked with Pate, Weatherholt, and Riddle, the ship carpenter.

Without going into the details of the testimony upon the formation of the contract, it is sufficient to say that Pate, who testifies to the making of the new or extended

contracts of May and August, is corroborated by McKaughan and May, and the further fact that both Rounds and Jesse visited the boat while the work was being done and made no objection whatever thereto.

When we consider that the original contract of March 23d contemplated comparatively slight repairs when compared with the work subsequently done, it is difficult to believe that appellants could have understood that this new work which resulted in practically building a new boat, could have been embraced in the original contract of March 23d. Yet Rounds is emphatic in his statement that he did not know before February, 1912, that any extra work beyond that contemplated by the contract of March 23d had been done upon the boat. Nevertheless, the record shows that on November 10, 1911, the appellee wrote a letter to appellants enclosing an itemized statement showing that the work done on and material furnished to the boat, to that date, amounted to $3,945.17. The letter not only further requested appellants to carefully examine the statement of account and verify its correctness, but the appellee therein estimated that the cost of the work upon the boat would probably be $5,000.00.

Rounds denied that he ever received the letter above referred to, although it was reproduced from the files of the appellants and filed in this case as a part of the deposition of Rounds. In view of this exceedingly lax memory upon the part of Rounds, we are not inclined to give very much weight to his recollection in other matters pertaining to this action.

In support of appellants' plea of estoppel an issue was made as to whether the check for $500.00 given by appellants to appellee on October 2, 1911, in part payment of the contract price, contained the recital that the $500.00 was paid "on contract of reconstructing the 'R. D. Kendall,' March 23, 1911." Appellants insist that the check shows the contract was limited to the contract of March 23d, and therefore supports their contention that they did not know anything about the extra work which

was not embraced in that contract. Appellee insists, however, that the recital above referred to was written on the face of the check after it had been paid and returned to the possession of appellants. We attach little importance, however, to the check, conceding that it was originally written as it now reads, since it is not a substantial contradiction of the contract as claimed by the appellee.

Furthermore, there is no merit in appellants' contention that they lost reasonably certain profits by appellee's failure to finish the boat before December 1, 1911. The alleged lost contracts would have been performed during the summer of 1911; and although the original contract of March 23d contemplated that the boat should be finished by June 10th, the extended contracts of May and August necessarily postponed the date of completion. This fact is shown by the appellee, and evidently it was but a necessary change consequent upon the extended contracts.

From a careful reading of the testimony we have reached the conclusion that the weight of the evidence supports the finding of the chancellor.

If, however, we were in any doubt upon this subject, we think the judgment of the chancellor should be affirmed under the well-recognized rule that where the proof is contradictory and the mind is left in doubt, the judgment of the chancellor will not be disturbed. Byassee v. Evans, 143 Ky. 415; Kirkpatrick's Exor. v. Rehkopf, 144 Ky. 134; Wathen v. Wathen, 149 Ky. 505; Bond v. Bond, 150 Ky. 392.

Finding no substantial error in the record, the judgment is affirmed.

CLAUDE MERCER, Hardinsburg, Ky.,
For Appellee.

SWEENEY, ELLIS & SWEENEY,
FLOYD J. LASWELL,
Owensboro, Ky.,
For Appellants.

Commonwealth of Kentucky,
Court of Appeals. } Sct.

I, Robert L. Greene, Clerk of the Kentucky Court of Appeals, hereby certify that the foregoing attached pages contain a true copy of the opinion delivered by said Court of Appeals in the case of Rounds & Jesse, Appellants, v. Cloverport Foundry & Machine Company, Appellee, as the same appears of record and on file in my office.

Witness my hand as Clerk of the Court of Appeals, this 31st day of October, 1914.

ROBT. L. GREENE, *Clerk,*
Kentucky Court of Appeals.

COURT OF APPEALS OF KENTUCKY.

F. T. ROUNDS & S. A. JESSE, - - - - - *Appellants,*

versus

CLOVERPORT FOUNDRY & MACHINE CO., - - *Appellee.*

PETITION FOR WRIT OF ERROR.

To the Honorable J. P. Hobson, Chief Justice of the Court of Appeals of Kentucky:

F. T. Rounds and S. A. Jesse, appellants in the above-styled case in the Court of Appeals of Kentucky, it being the highest court of said State, hereby petition for the allowance of a writ of error from the Supreme Court of the United States to the Court of Appeals of Kentucky in order that the judgment of the Court of Appeals of Kentucky in this case, of date June 5, 1914, against appellants, amounting to $5,668.65 may be re-examined by the Supreme Court of the United States and reversed if found to be erroneous.

The ground of this application is, that the Cloverport Foundry & Machine Co. claimed and still claims it had a lien on the steamboat Golden Girl, amounting to $5,668.65, for which it sued out a specific attachment under the laws of the State of Kentucky in the Breckenridge Circuit Court and which was levied upon said boat, which belonged to appellants, growing out of, as appellee claimed, a contract with appellants to repair and remodel the steamboat R. D. Kendall, which was then engaged in interstate commerce between the States of Kentucky and Indiana, and whose home port was Owensboro, Ky.,

which, after the repairs were made thereon was renamed the Golden Girl, said appellee having filed a statement for a lien in the County Court of Breckenridge County claiming a lien upon said boat for said sum under Section 2463, and also under Sections 2480 and 2483, both inclusive, of the Kentucky Statutes, and which contention can not be constitutionally applied to the facts in this case without violating Sub-section 3 of Section 8 of Article 1 of the Constitution of the United States, and the judgment of this court affirming the judgment of the Breckenridge Circuit Court is violative of Section 2, Article 3, of the Constitution of the United States and invades the admiralty jurisdiction of the courts of the United States and takes away the jurisdiction of the Admiralty Courts of the United States and places it in the State Courts of Kentucky, and that the enforcement of the judgment of this court violates Section 1 of Article 14 of the Constitution of the United States in that it abridges the privileges of appellants, who are citizens of the United States, and deprives appellants of the equal protection of the law and takes appellants' property without due process of law, all of which is fully apparent in the record and proceedings of the case and specifically set forth in the assignment of errors filed herewith; and said appellants, F. T. Rounds and S. A. Jesse further petition that upon the allowance of said writ of error and the execution of the supersedeas bond to be approved by Your Honor, that the mandate of this court be suspended and that no execution be issued for the satisfaction of said judgment pending the argument and decision of this case in the Supreme Court of the United States.

W. T. Ellis,
Jas. J. Sweeney,
Attorneys for Petitioners.

State of Kentucky, }
} Set.
County of Daviess. }

F. T. Rounds says he is one of the petitioners herein and that the statements of the foregoing petition are true as he verily believes.

FRANK T. ROUNDS.

Subscribed and sworn to before me by F. T. Rounds this 28th day of September, 1914.

M. L. OGDEN,
Notary Public, Daviess County, Ky.

My Commission expires January 23, 1918.
(Seal)

Filed September 29, 1914. Writ allowed bond to be executed in the sum of ten thousand dollars, and to be a supersedeas bond.

J. P. HOBSON,
Chief Justice, Kentucky Court of Appeals.

UNITED STATES OF AMERICA, S. S.

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between F. T. Rounds and S. A. Jesse, appellants, against the Cloverport Foundry & Machine Company, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said F. T. Rounds and S. A. Jesse as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and the proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct

that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-ninth day of September, in the year of our Lord, one thousand nine hundred and fourteen.

Clerk of the United States District Court for the Eastern District of Kentucky.

Allowed by J. P. HOBSON,
Chief Justice, Kentucky Court of Appeals.

Filed September 29, 1914.
ROBT. L. GREENE, C. C. A.

COURT OF APPEALS OF KENTUCKY.

F. T. ROUNDS & S. A. JESSE, - - - - - *Appellants,*

versus

CLOVERPORT FOUNDRY & MACHINE CO., - - *Appellee.*

ASSIGNMENT OF ERRORS.

1. The Court of Appeals of the State of Kentucky erred in holding that the State Court of Kentucky had jurisdiction to enforce the demand sued on, including the enforcement of the statutory lien.

2. The Court of Appeals of Kentucky erred in holding that the demand sued on did not arise out of a maritime contract and was enforceable in the Breckenridge Circuit Court of the State of Kentucky.

3. The Court of Appeals of Kentucky erred in not holding that the contract sued on for the improvements and repairs on the R. D. Kendall (afterwards called the Golden Girl) was a maritime contract and enforceable only in the Admiralty Courts of the United States.

4. The Court of Appeals of Kentucky erred in holding the jurisdiction of the State court in cases of this character had been repeatedly invoked and sustained by the State court and in holding that the common-law jurisdiction, with the common-law remedies were expressly saved to the State courts by the Judiciary Act of Congress of September 24, 1789 (now contained in the Act of Congress approved March 3, 1911).

5. The Court of Appeals erred in holding the relief sought in that court was a common-law remedy, or was of common-law jurisdiction, or that the common-law was ever adequate to furnish a remedy in a case like the case at bar.

6. The Court of Appeals of Kentucky erred in holding that Sections 2480 to 2486, inclusive of Kentucky Statutes, giving liens upon water crafts, were enforceable in the Breckenridge Circuit Court of Kentucky and the enforcement of said lien in said court did not invade the jurisdiction of the Admiralty Courts of the United States.

7. The Court of Appeals of Kentucky erred in holding that this was a proceeding *in rem*, which was not forbidden to the State courts by the Constitution of the United States and in holding that appellee could proceed against the owner accompanied by an attachment when the attachment was a mere incident to a personal suit and the mere means of reaching the owner's interest and was such a proceeding that only their title could be sold and not a clear title to the property itself, when the judgment of the court directs a sale of the property itself and appellants were the sole owners of the property.

8. The Court of Appeals of Kentucky erred in holding that the contract sued on was not a maritime contract and lien, and enforceable only in the Admiralty Courts of the United States, and that the judgment of the Court of Appeals of Kentucky erred in holding that the decision of the Breckenridge Circuit Court of Kentucky was not violative of Article 1, Section 8, Sub-section 3, Federal Constitution.

9. The Court of Appeals of Kentucky erred in holding that the judgment of the Breckenridge Circuit Court of Kentucky did not violate appellants' rights and did not take their property without due process of law and did not deny them the equal protection of the law as provided in amendment to the Constitution of the United States, Article 14, Section 1.

W. T. Ellis,
Jas. J. Sweeney,
Attorneys for Plaintiffs in Error.

Filed September 29, 1914.

J. P. Hobson,
Chief Justice, Kentucky Court of Appeals.

Filed September 29, 1914.

Robt. L. Greene, C. C. A.

COMMONWEALTH OF KENTUCKY.

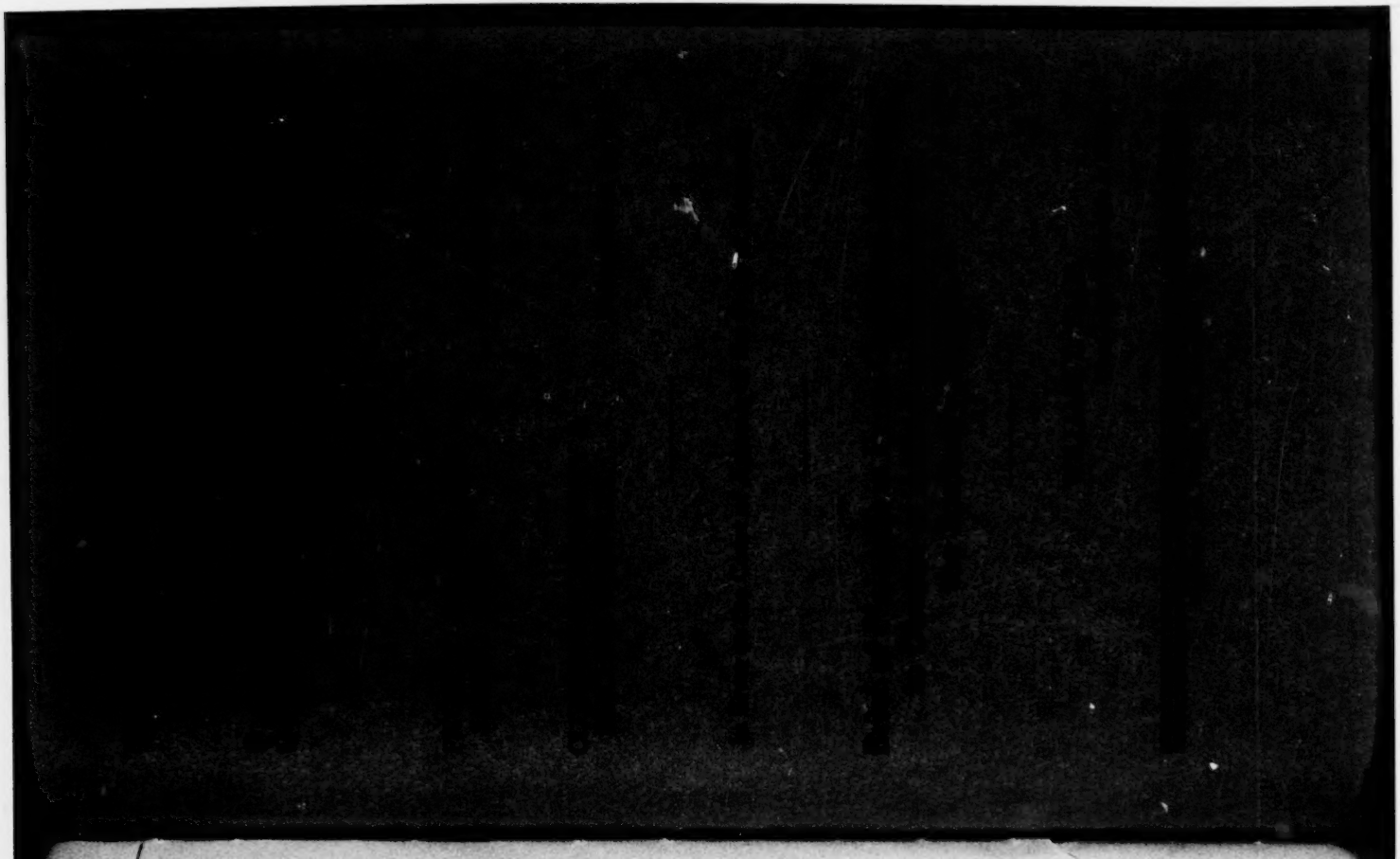
COURT OF APPEALS, Sct.:

I, Robt. L. Greene, Clerk of the Kentucky Court of Appeals, hereby certify that the foregoing and attached pages contain true, full and complete copies of the Petition, Answer and Counter-claim, Reply, Amended Answer and Counter-claim, Reply to Amended Answer, Petition for Writ of Error, Writ of Error and Assignment of Errors, in case of Rounds & Jesse, appellants, against Cloverport Foundry and Machine Company, appellee, lately pending in said Court of Appeals, as the same appear from the files of said case in my office.

It witness whereof, I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Ky., this 6th day of November, 1914.

ROBERT L. GREENE,

(SEAL) *Clerk of the Kentucky Court of Appeals.*



Supreme Court of the United States

Frank T. Rounds and
Samuel A. Jesse, - - - Plaintiffs in Error,

Vs. { BRIEF OF PLAINTIFFS IN ERROR ON MOTIONS TO DISMISS, AFFIRM OR TRANSFER TO THE SUMMARY DOCKET.

Cloverport Foundry &
Machine Company, - - - Defendant in Error.

MAY IT PLEASE YOUR HONORS:

Counsel for defendant in error has, I think, without due consideration, entered four separate motions in this case: (1) To dismiss because the court has no jurisdiction; (2) to affirm on the ground that the writ of error was taken for delay only; (3) to transfer the cause for hearing to the summary docket, and (4) to award damages.

Whether the court will consider these motions in advance of the regular hearing, and before defendant in error has advised itself which, if any one, of its motions ought to be sustained, I do not know.

Counsel for defendant in error attaches to his brief an appendix purporting to be a copy of certain parts of the record. The appendix is an ex parte excerpt, which I think fails to disclose all the facts the court should have before it, if the motions are now to be considered.

STATEMENT OF FACTS.

On the 23rd day of March, 1911, defendant in error, then engaged in the business of steamboat building, entered into a written contract with plaintiffs in error, whereby it agreed to remodel and re-construct a steamboat (the R. D. Kendall) then engaged in commerce for plaintiffs in error. The nature and character of that contract is set out in the written agreement, which appears at pages 124-125, Appendix to Brief of Defendant in Error.

Plaintiffs in error, the owners of the boat, lived at Owensboro, Kentucky, a town on the Ohio River, which was the home port of the "R. D. Kendall," the steam or tow boat defendant in error contracted to repair and remodel.

Defendant in error took possession of the steamboat, "R. D. Kendall," at Cloverport, Kentucky, another town on the Ohio River, where the repairs sued for in this case were made.

In December, 1911, defendant in error claimed to have completed the work contracted for in the written agreement, but a controversy as to the amount claimed for repairs arose between plaintiffs in error and defendant in error. The steamboat being in the possession of defendant in error, it refused, on demand, to surrender possession of it to plaintiffs in error until the sum

claimed had been paid; thereupon, this suit was begun in the State Circuit Court of Breckenridge County, Kentucky, for the alleged price of work done and materials furnished in repairing the steamboat. A specific attachment was sued out and levied upon the steamboat. (Brief of Defendant in error, pages 5-6).

Plaintiffs in error were not citizens of, or served with process in the county in which the suit was brought; they appeared in the Breckenridge Circuit Court specially and only for the purpose of demurring to the jurisdiction of the court. They demurred on the ground that the State Court had no jurisdiction of the subject matter of the action and that it had no jurisdiction of the persons of defendants. That motion was overruled, to which the defendants excepted. (See order of Court, Supplement to this Brief). The certified copy of the demurrer and the ruling of the Court thereon are filed with the Clerk of this Court.

Their demurrer being overruled, plaintiffs in error, under protest, filed an answer to the merits; in their answer they again challenged the jurisdiction of the State court and say:

> "Further answering, defendants say each of the matters set out in the petition present Federal questions which are exclusively cognizable in the United States Courts, and that this court has no jurisdiction either of the persons of defendants or the subject matter of this action. They plead and rely on these facts in bar of this court's jurisdiction and in bar of any recovery against them herein." (Appendix to Brief of defendant in error, page 129).

Judgment was rendered against plaintiffs in error in the Breckenridge Circuit Court and they appealed to the Court of Appeals, which affirmed the decision of the lower court.

In its opinion the Court of Appeals of Kentucky say:

> "Before answering, the appellants, by a special demurrer raised the question of the jurisdiction of the Breckenridge Circuit Court to entertain this action. The objection to the jurisdiction was based on the ground that the claim sued on, and the lien asserted by the appellee, were of exclusive admiralty cognizance and that the jurisdiction in all such cases was in the admiralty courts of the United States. The plea to the jurisdiction was overruled; whereupon, the defendants answered." (Appendix to Brief of Defendant in error, page 262).

I refer particularly to the demurrer to the jurisdiction and to the plea made in the answer to bring to the attention of the Court the fact that the jurisdiction of the State Court was questioned on the threshold, and that, that objection was pressed in the Supreme Court of the State.

The judgment of the Breckenridge Circuit Court adjudged defendant in error a lien on the steamboat for the payment of its alleged debt ($5,668.65), and directed a sale of the steamer. That a Federal question was made and insisted upon at every stage of the proceeding does not, I think, admit a doubt.

THE DEMAND SUED ON IN THE STATE COURT AROSE OUT OF A MARITIME CONTRACT.

The contention of plaintiffs in error from the beginning has been, and now is, that the subject matter of the suit grows out of maritime contract. If this is a correct legal construction of the contract sued on, the State Court had no jurisdiction in the

first instance, and the special demurrer of plaintiffs in error to the jurisdiction of the court should have been sustained.

That the contract sued on is a maritime contract, I believe is, when tested by the decisions of this and all the Federal Courts, as far as I have been able to ascertain, susceptible of easy demonstration.

Counsel for defendant in error confuses the nature of the contract sued on in this case with a contract *for building a new steamboat or ship*. There is, as I think, and as the decisions of this and other Federal Courts plainly indicate, a wide distinction between a contract *to build a steamboat and a contract to "remodel" a steamboat already in existence and engaged in commerce.*

It is plain enough to see that a contract to build a new steamboat—*to create a thing not in existence*—is a non-maritime contract, and for the plain reason, as the cases appear to hold, that credit in such case could not, either in whole or in part, be given to a *thing not in existence*. But we have quite a different case here, where a steamer already in existence and engaged in commerce is to be remodeled or reconstructed. In this case the thing to be worked upon had an entity; defendant in error had it in possession, the law presumes in such case that credit is given to the steamer, and not to the individual.

A FEDERAL QUESTION.

One of the motions made by counsel for defendant in error is based on the ground that there is no Federal question involved in this case.

In St. Louis, &c., Ry. Co. vs. Taylor, Admr., 210 U. S., 281, this Court says:

> "But the defendant in error insists that the questions themselves, though properly here in form, are not *Federal questions;* that is to say, not questions which we by law are authorized to consider on a writ of error to a State Court. For that reason it is contended that the writ should be dismissed. * * * This court is not a general Court of Appeals, with the general right to review the decisions of the State Courts. We may only inquire whether there has been error committed in the decisions of those Federal questions which are set forth in section 709 of the Revised Statutes, and it is strenuously urged that the error in this part of the case was not in the decision of any such Federal question. That position we proceed to examine."

Considering that question this Court says:

> "The words of that section (709) material here are those authorizing this Court to re-examine the judgments of State courts *when any title, right, privilege, or immunity is claimed under * * * any statute of * * * the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed under such * * * statute.*
>
> *"There can be no doubt that the claim made here was specifically set up, claimed and denied in the State courts. The question, therefore, precisely stated, is whether it was a claim of right or immunity under the statute of the United States.* (Citing cases).
>
> "The principles to be derived from the cases are these: *Where a party to litigation in a State court insists, by way of objection or requests for instructions, upon a construction of a statute of the United States which will lead, or, on possible findings of fact from the evidence may lead, to a judgment*

in his favor, and his claim in this respect, being duly set up, is denied by the highest court of the State, then the question thus raised may be reviewed by this Court.

"The plain reason is that in all such cases he has claimed in the State court a right or immunity under a law of the United States, and it has been denied him. Jurisdiction so clearly warranted by the constitution and so explicitly conferred by the act of Congress needs no justification." (Italics are my own).

Plaintiffs in error made a Federal question and challenged the State court's jurisdiction. In order to determine that question the State court was obliged to and did construe a Federal Statute. The State court held the contract sued on was a non-maritime contract.

To reach that conclusion the court construed the judiciary act of 1789 (now the act of March 3rd, 1911), and held, that that act did not embrace contracts like the one sued on in this case. The State court held that the act of Congress of 1789, and that of March 3rd, 1911, which re-enacted the old law, gave defendant in error the right to maintain this action because, as the State court held, defendant in error had by that act "the right of a common law remedy where the common law is competent to give it," and that the common law was adequate to give the remedy sought in this case, hence the State court had jurisdiction. Thus your Honors see the State Court in this case, construed a Federal Statute and construed it, as I believe, wrong, by holding that defendant in error has in this case a common law remedy, when the truth is, the common law was never adequate to furnish any such remedy, as the defendant in error sought to and did enforce in this case.

It is, therefore, apparent on the face of things here, that the State court construed a Federal Statute adversely to the claim made by plaintiffs in error; and, thereupon, rendered judgment against them.

If the construction of the Federal Statute had been favorable to plaintiffs in error; if the State court had held that the contract under the act of Congress was a maritime contract, or that the common law was not competent to give defendant in error relief, then the demurrer of plaintiffs in error would have been sustained.

Here we have a distinct, plain construction of a Federal Statute by the State courts; they have construed that statute adversely to the claim made by plaintiffs in error, and that at once raises a Federal question, which this court will review.

Whether plaintiffs in error are right or wrong in their construction of that statute is not at present a question to be decided; that is a question which will arise on the final hearing. But certainly there can be no doubt that a Federal question was raised; that it was decided adversely to plaintiffs in error, and that that decision resulted in the judgment complained of in this case.

THE CONTRACT SUED ON IS PURELY MARITIME IN ITS CHARACTER.

Bearing in mind always the distinction between a contract for the building or creation of a steamer, and one for the remodeling or re-construction of a steamer already in existence, I cite the

following cases as showing that the contract here is maritime, and that the State Court had no jurisdiction.

TOWN OF PELHAM V. THE SCHOONER B. F. WOOLSEY, &C., 3 FED. REP. 457,

AND

TERRELL V. THE SCHOONER B. F. WOOLSEY, 4 FED. REP., 552.

In the two cases cited above, both the District and the Circuit Courts construed the judiciary act and the conclusion to which those courts came is in direct conflict with that to which the Court of Appeals of Kentucky came.

In construing that act the District Court said:

> "I think it entirely clear that the remedy was not a common law remedy, nor one which the common law, so understood, was competent to give. It is too clear for argument that the action is not a common law action, either in its form or effect, or in the nature of the judgment. It is more in the nature, both in its form and in the character of the remedy given, of a bill in equity *to foreclose a mortgage.* The reservation in the act of Congress relates to well known forms of actions and remedies, distinguished alike from those prosecuted *in rem* in courts of admiralty, and from those that are peculiar to courts of equity, equitable remedies and those which it was competent for equity to give are not saved where the suit is brought for the enforcement of a maritime contract. *It is no answer to say that the proceeding is not strictly in rem, because it affects only the right or title of certain defendants*

against whom the suit is brought. That which is saved to the suitor is in all forms of actions, and all remedies other than actions and remedies strictly *in rem*, by only common law remedies. It is no answer to say that the lien sought to be enforced *is not a maritime lien*, but strictly a common law lien. That does not make the new remedy given by the statute a common law remedy. No lien created by a State law, whether it be by the unwritten and traditional law, which collectively we call the common law, or by express statute, is a maritime lien. Maritime liens are created and exist only by force or the maritime law."

The case was appealed to the Circuit Court and Mr. Justice Blatchford, sitting as Circuit Judge, affirmed the decision of the District Judge, in which, among other things he said:

"The distinction between a common law remedy and an equitable remedy and other remedies is thus recognized, and the distinction obtains in the United States statute under consideration. An equitable remedy, such as the one in the present case, is not a common law remedy, or one which the common law was ever considered as competent to give.

"The expressions *common law remedy* and *common law*, as used in the Revised Statutes of the United States, are to be understood in the sense in which those words were written in 1789, when the statute in question was first enacted. It could not have been the intention of Congress, by the expression in that section, to give the suitor all such remedies as might be afterwards enacted by State statutes, for this would have enabled the State to make the jurisdiction of their courts concurrent in all cases by simply providing a statutory remedy for all cases. Thus the exclusive jurisdiction of the Federal Courts would be defeated.

"It results that the decree of the District Court was correct, and that a decree must be entered in this Court in affirm-

ance thereof, and to the same effect, with the costs of this Court to the appellees against the appellant." Terrell vs. The Schooner B. F. Woolsey, 4 Fed. Rep. 552.

The cases cited above sustain the contention of plaintiffs in error, that the State Court was without jurisdiction.

KNAPP, STOUT & CO. V. McCAFFERY, 170 U. S.

In that case this Court, through Mr. Justice Brown, who wrote the opinion, said:

> "That wherever any lien is given by a State statute for a cause of action cognizable in admiralty, *either in rem or in personam, proceedings in rem to enforce such lien are within the exclusive jurisdiction of the admiralty courts.*"

THE ROBERT W. PARSONS.

In that case, which is reported in Vol. 191 U. S. Reports, page 17, this Court holds that the enforcement of a lien *in rem* for repairs made on a boat in a port of the State to which it belongs, being a canal boat engaged in traffic on the Erie Canal and Hudson River, *is wholly within the jurisdiction of the admiralty courts, and that such lien could not be enforced in any proceeding in rem in the State courts of New York.*

In the Richard Busteed case No. 11,764, 20 Fed. Cases, the District Court held that repairs on domestic ships constituted mari-

time contracts and that the jurisdiction was in courts of the United States, in admiralty.

> "Those services are maritime which are connected with the repair or betterment of the vessel, or rendered in aid of her navigation by labor performed on board, or in the sustenance and relief of those who conduct her operations at sea." Am. & Eng. Ency., Vol. 19, page 1088; 11 Fed. Cases No. 5874.

In Gurney vs. Crockett, 11 Fed. Cases No. 5874 the District Court for the Southern District of New York held as follows:

> "Manifestly not every contract in relation to maritime matters falls within the cognizance of maritime courts; and without attempting to define with strictness the terms within which the jurisdiction of admiralty courts is circumscribed, it may be safely asserted, *that to impart a maritime character to a subject relating to personal services in vessels, it must be connected with the reparation or betterment of the vessel, or be rendered in aid of her navigation, directly by labor on the vessel, or in sustenance and relief of those conducting her operations at sea.*"

That is the case we have here.

In the case from which the above extract is quoted the Court cites the case of New Jersey Steam Nav. Co. vs. Merchants Bank, 6 Howard, 344, to which your Honors' attention is directed.

We have already seen that the claim sued for in this case is for labor performed and materials furnished in remodeling and repairing the "R. D. Kendail," which at the time was engaged in commerce on the waters of the Ohio River, between the States of Kentucky and Indiana.

The services rendered were in aid of the boat's navigation. To further sustain their contention, that the maritime law gives a lien for repairs made on a vessel which can only be enforced in a court of admiralty, plaintiffs in error cite the case of The Ship Thomas, 19 Fed. Cases, No. 11106-7.

A SPECIFIC ATTACHMENT AGAINST THE BOAT WAS SUED OUT IN THIS CASE.

The proceeding in this case was, in its essence, a suit against the steamboat to enforce a lien; a specific attachment was sued out and levied on the boat. The proceeding was essentially against the boat. (Brief of Defendant in Error, page 25).

The specific attachment in this case was sued out under section 249, Kentucky Civil Code of Practice, which section is as follows:

> "(Actions in Which Specific Attachments Allowed, and Grounds for). In an action to enforce a mortgage of, or lien upon, personal property; or, for the recovery, partition or sale of such property; or, by a plaintiff having a future estate or interest therein for the security of his rights, if it satisfactorily appear, from a verified petition, or from affidavits, or the proofs in the cause, that the plaintiff has a just claim, and that the property is about to be sold, concealed or removed from the State; or, if the plaintiff state on oath that he has reasonable cause to believe and does believe that, unless prevented by the Court, the property will be sold, concealed or removed from the State, an attachment may be granted against the property."

The boat was seized under the attachment sued out under the provision of the Code above quoted. It is only in cases where the proceeding *is essentially against the thing itself that such attachments are authorized.*

The proceeding was, therefore, a proceeding *in rem,* and not a proceeding in *personam.* But, if the proceeding had been in *personam,* as stated by this Court in Knapp, Stout & Co. vs. McCaffery, 177 U. S., that would not have changed the situation, because, as said by this Court in that case, the cause of action was cognizable only in admiralty proceedings to enforce such lien.

DECISIONS OF KENTUCKY COURT OF APPEALS.

I do not consider the decisions of the Kentucky Court of Appeals construing the Federal Judiciary Act, because those decisions are, I think, in conflict with the decisions of this Court.

An examination of the decisions cited by the Court of Appeals in this case will, however, show that all of them, with possibly one exception, were suits at law for damages occurring as a result of collisions on the navigable waters of the United States.

The common law was always adequate to furnish a remedy in that class of cases. But, this is a suit in equity and not at law; and the common law was never adequate to furnish a remedy in such cases. Town of Pelham vs. Schooner B. F. Woolsey, &c., 3 Fed. Rep., 457; Terrell vs. Schooner B. F. Woolsey, &c., 4 Fed. Rep., 552.

If it be insisted that the decisions of the Kentucky Court of

Appeals construing the judiciary act are against the contention of plaintiffs in error, it is a sufficient reply to say that those decisions are in conflict with the decisions of this Court, and that the State Court has failed to follow the decisions of the Federal Courts in construing a Federal Statute.

In the construction of a Federal Statute it is the duty of the State Court to follow the decisions of the Federal Court construing such statute; Federal Courts uniformly follow the decisions of State Courts in construing State statutes.

CASES CITED BY COUNSEL FOR DEFENDANT IN ERROR NOT APPLICABLE TO THE FACTS OF THIS CASE.

An examination of the many cases cited by counsel for defendant in error will show that in each case the suit was to recover the price for *original construction,* and not for repairs of a vessel already in existence and engaged in commerce. I mention only three of them.

The case of Roach & Long vs. William Chapman, 22 Howard, was a suit for material furnished for building the vessel; that of People's Ferry Co. vs. Beers, 20 Howard, was a suit on a contract for building a ship, and that of The Winnebago, 205 U. S., 355, was a suit for the balance of the contract price for the original construction of the vessel.

I, therefore, insist with much confidence, that the cases cited by opposing counsel are not applicable to the facts of this case.

I deem it unnecessary to consider either the second, third or fourth motions entered by defendant in error, because if the Court shall hold that a Federal question is made in this case, all the motions ought to be overruled.

Respectfully,

WILLIAM T. ELLIS,

Counsel for Plaintiffs in Error.

SUPPLEMENT.

At a Circuit Court continued and held at the Court House in Hardinsburg, Kentucky, on Monday, the 13th day of May, 1912.

Pres. Hon. W. P. Sandidge, Special Judge in and for the Ninth Judicial District of Kentucky.

Thereupon on the 13th day of May, 1912, the following Order was entered in Order Book 36, page 4. Said Order is as follows, to-wit:

Cloverport Foundry & Machine Co, - - - - - *Plaintiff,*
vs. No. 3832.
F. T. Rounds and S. A. Jesse, - - - - - *Defendants.*

Now comes the defendants, F. T. Rounds and S. A. Jesse, and appear specially and only for the purpose of moving the Court to quash the process which issued herein. Pursuant to said special appearance, defendants moved the Court to quash the process herein. The Court having heard argument and said motion and being advised, overruled same, to which the defendants except.

Thereupon the defendants filed under protest a demurrer to the jurisdiction of the Court over the subject matter of the action, of which demurrer the Court not being advised, took same under advisement.

Said demurrer filed on the 13th day of May, 1912, is in words and figures as follows, to-wit:

BRECKENRIDGE CIRCUIT COURT.

Cloverport Foundry & Machine Co., - - - - - - *Plaintiff,*

vs. Demurrer.

F. T. Rounds and S. A. Jesse, - - - - - - - *Defendants.*

The defendants, F. T. Rounds and S. A. Jesse, demur to the jurisdiction of this Court, and for grounds say:

1. The Court has no jurisdiction of the subject matter of the action.

2. It has no jurisdiction of the person of the defendants.

Wherefore, they pray the judgment of the Court thereon and to be hence dismissed.

SWEENEY, ELLIS & SWEENEY,

Attorneys for Defendants.

On the reverse side of this Demurrer is found the following words and figures, to-wit: No. 3832.

BRECKENRIDGE CIRCUIT COURT.

Cloverport Foundry & Machine Co., - - - - - - *Plaintiff,*

vs. Demurrer.

F. T. Rounds and S. A. Jesse, - - - - - - - *Defendants.*

1912, May 13, Filed in Open Court.

Attest:

LEE WALLS, C. B. C. C.

At a Circuit Court continued and held at the Court House in Hardinsburg, Ky., on Friday, the 17th day of May, 1912.

Pres. Hon. W. P. Sandidge, Special Judge in and for the Ninth Judicial District of Kentucky.

Thereupon on the 17th day of May, 1912, the following order was entered. Said Order is as follows, to-wit:

Cloverport Foundry & Machine Co., - - - - - - *Plaintiff,*

vs. No. 3453.

F. T. Rounds and S. A. Jesse, - - - - - - - *Defendants.*

This action having been submitted on Defendant's Special Demurrer to the Jurisdiction of this Court, and the Court being advised, overruled said Demurrer to which Defendant excepts, and Defendant is given 30 days to file answer and this action is Continued.

COMMONWEALTH OF KENTUCKY.
COURT OF APPEALS, Sct:

I, Robt. L. Greene, Clerk of the Kentucky Court of Appeals aforesaid, hereby certify that the foregoing and attached typewritten matter contain true and correct copies of the Demurrer to the Jurisdiction and the Orders thereon entered in the case of Cloverport Foundry & Machine Co., Plaintiff, vs. F. T. Rounds and S. A. Jesse, Defendants, as appear from the transcript of the record on appeal now on file in my office in said case by Rounds & Jesse, as Appellants, vs. Cloverport Foundry & Machine Company, appellee.

In witness whereof, I have hereunto set my hand and affixed the seal of my office.

Done at Frankfort, Kentucky, this 14th day of November, A. D., 1914.

ROBERT L. GREENE,

(SEAL) *Clerk of the Kentucky Court of Appeals.*

FILED
FEB 13 1915
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 669.

FRANK T. ROUNDS AND SAMUEL JESSE, - - - - - - - Plaintiffs in Error,

versus

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - Defendant in Error.

In Error to the Court of Appeals of the State of Kentucky.

Supplemental Brief of Defendant in Error in Support of Motions to Dismiss or Affirm and on the Merits.

CLAUDE MERCER, Hardinsburg, Ky.,
Attorney for Defendant in Error.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

IN THE

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versus

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - - - - *Defendant in Error.*

In Error to the Court of Appeals of the State of Kentucky.

SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR IN SUPPORT OF MOTIONS TO DISMISS OR AFFIRM AND ON THE MERITS.

Counsel for plaintiffs in error in his brief concedes that a contract for the construction of a vessel is not maritime but contends that this contract was for repairs on a vessel, and, therefore, is cognizable exclusively in the admiralty. The undisputed testimony printed in the record discloses that the boat, "R. D. Kendall," was

entirely dismantled and that a new boat was built, christened the "Golden Girl," and that the identity of the old boat was absolutely destroyed.

Quoting from 26 Cyc., 761, is the following:

> "Nothing better illustrates the effect of the warfare waged by the common-law courts upon the admiralty courts in England than the fact that contracts for the building of ships were excluded from the list of maritime causes of action. Under the civil law and the maritime law of continental Europe there was no distinction between construction and repairing. In fact, there was no such distinction in England itself for a long time, and the compromise agreement of 1632 made between the common-law and admiralty judges as a means of settling their contentions placed construction and repairs upon the same footing. But the final result of this contest was to exclude construction contracts from the cognizance of the English Admiralty Courts because made on land and to be performed on land. The Act of 24 Victoria has restored the jurisdiction of the admiralty courts over such claims, if, at the time of instituting such a suit, the ship or its proceeds are already under judicial arrest. In the United States the decisions of the lower courts on the subject were for a long time favorable to the maritime character of the contract. But in 1857, the question came squarely before the Supreme Court, at a time when the death of Judge Story had deprived the admiralty of its strongest advocate, and the court decided against the maritime character of such contracts, holding that they are non-maritime because made on land and to be performed on land (which is certainly not the fact as to the entire contract). And the decision has since been followed or approved in many cases, and must be considered as settled. However, many States have enacted statutes giving a lien for construction work, and these statutes are

> valid for the very reason that they do not create a maritime lien enforceable in the State courts and hence do not interfere with the Federal admiralty jurisdiction."

We have fully discussed the leading case of People's Ferry Co. v. Beers, 20 Howard, 393, in our first brief, which is cited by Cyc., as the case referred to in the above quotation. The decisions agree that everything done before the vessel is launched comes under the head of construction. It is also held that anything that would technically be a part of the vessel itself, or its tackle or apparel, as distinguished from mere supplies, is construction work, although furnished after launching; that everything is construction until the ship is completed as a ship.

In re Glenmont, 32 Fed. 703 (affirmed in 34 Fed. 402). This ruling has been made more than once as to machinery put in after launching.

> The Paradox, 61 Fed. 860.
> The Count DeLesseps, 17 Fed. 460.
> The Pacific, 9 Fed. 120, and other cases.

And the same has been held as to sails and rigging, The Iosco, 13 Fed. case No. 7060, and a number of other cases. So as to masts and spars, Griffenberg v. John Laughlin, 11 Fed. cases No. 5, 811, and a number of other cases.

The court will remember that the People's Ferry Co. v. Beers, *supra,* was a libel by parties who had a contract for building the hull and delivering it on the water. Hence, their contract was not complete until after launch-

ing. Yet the court held it was not maritime and it has been followed in a great many cases, most of which we have cited.

The next case was Roach v. Chapman, cited in our first brief, 22 How. 129. The court will recall that was a libel for the price of the original engines and boilers which were put in while the vessel was lying at the wharf at Louisville, which was after launching. This is also conclusive of the question that such is deemed original construction and not repairs, and is therefore not maritime.

In McMaster v. One Dredge, 95 Fed. 832, and in Cain v. Greenway, 71 N. Y. 413, work which changed the character of the craft in the first case by taking a scow and fitting it up as a dredge, after it had been long used as a scow, and in the second case by altering the propelling machinery, was held to be construction work and not repairs. The case of The Ferax, 8 Fed. case No. 4737, 1 Sprague, 180, holds that EXTENSIVE ALTERATIONS come under the head of construction and not repairs and such does not create a maritime lien.

The identity of the old tow-boat is completely lost and the courts have uniformly held that there is no maritime lien upon the new boat merely because some materials were used from an old one, for work done in fitting them into new ones.

Hauntupee v. Coal Bluff, No. 2, 11 Fed. case No. 6172.

Smith v. The Royal George, 22 Fed. cases No. 13, 102, No. 1 Woods, 290.

Counsel for plaintiffs in error cite the Robert W. Parsons, Vol. 191, U. S. Reports, page 17. This is a very strong case in support of defendant's contention. In that case the statutes of the State of New York giving a lien for repairs upon vessels, provided a remedy for enforcing the same *in rem*. This court held that statute to be unconstitutional so far as concerns the remedy because it was an infringement upon the exclusive jurisdiction of the courts of the United States in admiralty and maritime cases to enforce a lien by proceeding *in rem*. This court has uniformly held that no State can provide a remedy *in rem* for the enforcement of any statutory lien, because a proceeding *in rem* was unknown to the common-law and is a creature of a civil law. Hence, it does not come within the saving clause of the Judiciary Act of 1789, which saved to suitors in all cases the right of a common-law remedy. Therefore, in every instance this court has declared that a proceeding *in rem* is exclusively within the admiralty jurisdiction.

Quoting from the Robert W. Parsons, page 37, is the language to-wit:

> "In all these cases the distinction is sharply drawn between a common-law action *in personam*, with a concurrent attachment against the goods and chattels of the defendant, subject, of course, to any existing liens, and a proceeding *in rem* against the vessel as the debtor, or "offending thing," which is the characteristic of a suit in admiralty.
>
> "The same distinction is carefully preserved in the general admiralty rules prescribed by this court; Rule 2 declaring that, in suits *in personam*, the mesne process may be, 'by a warrant of arrest of the per-

son of the defendant, with the clause therein that if he can not be found, to attach his goods and chattels to the amount sued for;' and Rule 9, that suits and proceedings *in rem,* the process shall be by warrant of arrest of the ship, goods, or other things to be arrested with public notice to be given in the newspapers. The former is in strict analogy to a common-law proceeding, and is a concurrent remedy. The latter is a proceeding distinctly maritime, of which exclusive jurisdiction is given to the admiralty courts.

"That the New York Statute belongs to the latter class is evident from the Code, by which, upon written application to a Justice of the Supreme Court, a warrant is issued for the seizure of the vessel, and for an order to show cause why it should not be sold to satisfy the lien."

The Kentucky Statute does not provide for a remedy *in rem* and this proceeding is not *in rem* in this action but *in personam,* with a concurrent attachment against the vessel to satisfy the personal debt of her owners. This and kindred statutes of many States have many times been upheld by this court, as not in conflict with the Federal Constitution.

Chief Justice Fuller together with Justices Peckam, Brewer and Harlan dissented in an elaborate opinion by Mr. Justice Brewer from the conclusion of the majority of the court which denied the State of New York the right to enforce a lien *in rem.* However, that case has no application to the one at bar because the constitutionality of the Kentucky Statutes was not or could not be raised.

We earnestly insist that the building of the steamboat in question undoubtedly comes under the head of original

construction, and not of repairs because as shown by the undisputed testimony a new boat was constructed and nothing remained to reveal the former identity of the old tow-boat known as the "R. D. Kendall." The boat as constructed was new in practically its entirety and the name "Golden Girl" was given to the new structure thus, completely destroying the identity of the old boat, because nothing was left of the old boat but a small part of the hull.

PENALTY FOR DELAY CAUSED BY THE WRIT OF ERROR SHOULD BE IMPOSED.

Should this court hold that sufficient color of a Federal question is raised by the plea to the jurisdiction to warrant the court to refuse to sustain the motion to dismiss, still, the motion to affirm will prevail, because, in the language of Chief Justice White, in the case of Deming v. Carlisle Packing Co., decided December 2, 1912, reported in 226 U. S. Supreme Court reports, page 102:

> "The decisions of this court also leave it no longer open to discussion that where it is found that a Federal question upon which a writ of error is based is unsubstantial and frivolous, the duty to affirm results."

This latter case discusses fully, as to whether or not this court can impose the damages prescribed by Subdivision 2, of Rule 23, if a motion to dismiss is sustained. This court held therein that it could award and would award damages upon sustaining a motion to dismiss as

well as upon an affirmance of the judgment appealed from.

Quoting further from that opinion is the following language:

> "It has been decided that where there was no power on a motion to dismiss, to consider whether a case was prosecuted for delay only, that a prayer for dismissal on such ground could not be allowed and damages could not be awarded. Amory v. Amory, 91 U. S. 356, 23 L. Ed. 436. But the mere statement of the doctrine demonstrates that it rested upon the obvious proposition that a decree would not be made to embrace subjects which the court was not empowered to consider in determining whether the relief asked for should be awarded. This doctrine has no application here, since, by a line of cases announced subsequent to the decision in Amory v. Amory, it has come to be settled that on a motion to dismiss, it is the duty of the court to consider whether an asserted Federal question is devoid of merit and unsubstantial, either because concluded by previous authority, or because of its absolutely frivolous nature, and if it is found to be of such character, to allow a motion to dismiss. This being true, as the conclusion that a writ of error has been prosecuted for delay is the inevitable result of a finding that it has been prosecuted upon a Federal ground which is unsubstantial and frivolous, it follows, that the question of delay is involved in and requires to be considered in passing upon a motion to dismiss because of the frivolous character of the Federal question. The decisions of this court also leave it no longer open to discussion that where it is found that a Federal question upon which a writ of error is based is unsubstantial and frivolous, the duty to affirm results."

We, therefore respectfully submit that the defendant in error is entitled to damages whether the motion to dismiss or the motion to affirm is sustained, for the reasons so aptly stated in the opinion of Chief Justice White as quoted herein.

We respectfully ask that the motion to dismiss be sustained, but if that be not done, that the motion to affirm be sustained and for judgment for costs and damages in either event.

Respectfully submitted,

CLAUDE MERCER, Hardinsburg, Ky.,
Attorney for Defendant in Error.

FEB 13 1915
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914

No. 669

FRANK T. ROUNDS AND SAMUEL JESSE, - - - - Plaintiffs in Error,

Vs.

CLOVERPORT FOUNDRY & MACHINE COMPANY, - - Defendant in Error.

In Error to the Court of Appeals of the State of Kentucky

BRIEF OF PLAINTIFFS IN ERROR

WILLIAM T. ELLIS,
Counsel for Plaintiffs in Error.

This Brief is to be filed pursuant to the following stipulation:

"The briefs filed on the making of the motion on the 7th day of December, 1914, shall be considered and read by the court upon the submission of this case * * * and additional briefs may be filed by both parties, but such additional briefs, if any, shall be filed at such time as will not prejudice the submission of this action for judgment February 23rd, next."

W. T. ELLIS,
Counsel for Plaintiffs in Error

CLAUDE MERCER,
Counsel for Defendant in Error.

Messenger Job Printing Co., Owensboro, Ky.

Supreme Court of the United States

OCTOBER TERM, 1914

No. 669

Frank T. Rounds & Samuel Jesse, - - - - Plaintiffs in Error,

vs.

Cloverport Foundry & Machine Company, - - - Defendant in Error.

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Supreme Court of the United States

No. 669

Frank T. Rounds and
Samuel A. Jesse, - - - Plaintiffs in Error,

vs. **BRIEF FOR PLAINTIFFS IN ERROR**

Cloverport Foundry &
Machine Company, - - - Defendant in Error.

MAY IT PLEASE YOUR HONORS:

Defendant in error some time ago moved the Court to dismiss this writ of error, on the ground no federal question was involved; that motion was denied, but, under a Rule of the Court, the case was placed on the Summary Docket for hearing on the merits.

Plaintiffs in error filed a brief opposing the motion to dismiss, which is a part of the record and under the stipulation between counsel is to be treated as a brief filed to be considered at the hearing on the merits.

But counsel for plaintiffs in error, under the stipulation filed, submits this additional brief to supplement what was said in his brief in opposition to defendant in error's motion to dismiss. I make my original brief, under the stipulation, part of this brief and ask the Court to consider it.

ADDITIONAL STATEMENT OF FACTS.

I will not restate in detail the facts of this case, but refer your Honors to pages 2 to 4 of my brief opposing motion to dismiss the writ of error for a better statement. I believe I accurately state in my brief opposing motion to dismiss, the facts on which this suit is predicated.

Without elaborating what I said in that brief at pages 2 to 4, with respect to the facts of this case, I ask now to add a short additional statement to show: (1) That the cause of action sued on arose out of a maritime contract; and (2) that a state court has no jurisdiction of the cause of action stated in the complaint, and that the whole subject is a matter of maritime jurisdiction, determinable alone in the admiralty courts of the United States.

The contract sued on is as follows:

"Cloverport, Ky., March 23, 1911.

"Messrs. Jesse & Rounds,
"Owensboro, Ky.

"Gentlemen:

"On yesterday we mailed you blue prints giving specifications in detail for the remodeling and rebuilding and converting the R. D. Kendall into an excursion steamer along the lines suggested and agreed upon between us. To all intents and purposes, these cover the work to be done from the deck up, including the docking of the boat, recaulking, one new stack and lengthening and changing old stack to conform with

new one, turning boiler around, taking out engines and putting in the Parker engines and such machine work necessary to be done on same to put in first-class condition, building new wheel, mast poles, raising the bow, new cylinder timbers (any work other than turning round and resetting boiler which may show up to be extra), all necessary ropes for masts and in fact everything to be done to make the job first-class in workmanship, at our estimate of Sixteen Hundred, Ninety and 66/100 Dollars ($1690.66).

"This price includes everything to be done as shown by the blue print, including the docking and recaulking the hull as above stated, except any extra work that we might find in the boiler and any new work that we may have to put in the hull which we can not see or make an estimate on, but all extra work to be done by us to complete the job and put same in good running condition and acceptable to the U. S. Steamboat Inspectors not to cost over Two Hundred Dollars ($200.00), said extra work if any found and material used we agree to do and furnish at the actual cost therefor plus ten per cent.

"All lumber and timbers used in the rebuilding to be of grade No. 1 common. Other material to be first-class and workmanship guaranteed.

"We have endeavored to make everything as clear to you as is possible to make on paper, having worked very diligently in getting up our plans and specifications, and while they are, practically speaking, complete, there is quite a number of little things not shown on them, which we thought entirely unnecessary to spend more time in enumerating them, as our proposal carries with it all of these small items to complete the job. In short, we do the work for the sum named ($1690.66) and guarantee that such extra work as may have to be done that we can not see or figure on shall not cost you exceeding the sum of Two Hundred Dollars ($200.00).

"We are anxious to get the boat here and get to work on it and shall complete same at the very earliest possible date,

which should not be longer than about June 1st to 10th, barring too much weather unfit for work.

"Will be glad to answer any further inquiries you may wish to make about the work to be done which we now believe all parties understand fully in a general way.

"Thanking you for past favors, we are

"Very truly yours,

"Cloverport Foundry & Machine Co.

"By Marion Weatherholt."

Defendant in error claims, which plaintiffs in error deny, that subsequent to the making of the above contract it had two additional contracts for further repairs on the steamboat, but I suppose the court will not be concerned with those contracts. If it wishes to examine the nature of the alleged subsequent agreements for repairs, it will find them set out at some length in the reply of defendant in error, Appendix to Brief Defendant in Error, page 131.

The assignment of errors relied on by plaintiffs in error herein is as follows:

"ASSIGNMENT OF ERRORS.

"1. The Court of Appeals of the State of Kentucky erred in holding that the State Court of Kentucky had jurisdiction to enforce the demand sued on, including the enforcement of the statutory lien.

"2. The Court of Appeals of Kentucky erred in holding that the demand sued on did not arise out of a maritime contract and was enforceable in the Breckenridge Circuit Court of the State of Kentucky.

"3. The Court of Appeals of Kentucky erred in not hold-

ing that the contract sued on for the improvements and repairs on the R. D. Kendall (afterwards called the Golden Girl) was a maritime contract and enforceable only in the Admiralty Courts of the United States.

"4. The Court of Appeals of Kentucky erred in holding the jurisdiction of the State Court in cases of this character had been repeatedly invoked and sustained by the State Court and in holding that the common-law jurisdiction, with the common-law remedies were expressly saved to the State Courts by the Judiciary Act of Congress of September 24, 1789 (now contained in the Act of Congress approved March 3, 1911).

"5. The Court of Appeals erred in holding the relief sought in that court was a common-law remedy, or was of common-law jurisdiction, or that the common-law was ever adequate to furnish a remedy in a case like the case at bar.

"6. The Court of Appeals of Kentucky erred in holding that Sections 2480 to 2486, inclusive of Kentucky Statutes, giving liens upon water crafts, were enforceable in the Breckenridge Circuit Court of Kentucky and the enforcement of said lien in said court did not invade the jurisdiction of the Admiralty Courts of the United States.

"7. The Court of Appeals of Kentucky erred in holding that this was a proceeding *in rem*, which was not forbidden to the State Courts by the Constitution of the United States and in holding that appellee could proceed against the owner accompanied by an attachment when the attachment was a mere incident to a personal suit and the mere means of reaching the owner's interest and was such a proceeding that only their title could be sold and not a clear title to the property itself, when the judgment of the court directs a sale of the property itself and appellants were the sole owners of the property.

"8. The Court of Appeals of Kentucky erred in holding that the contract sued on was not a maritime contract and lien, and enforceable only in the Admiralty Courts of the

United States, and that the judgment of the Court of Appeals of Kentucky erred in holding that the decision of the Breckenridge Circuit Court of Kentucky was not violative of Article 1, Section 8, Sub-section 3, Federal Constitution.

"9. The Court of Appeals of Kentucky erred in holding that the judgment of the Breckenridge Circuit Court of Kentucky did not violate appellants' rights and did not take their property without due process of law and did not deny them the equal protection of the law as provided in amendment to the Constitution of the United States, Article 14, Section 1.

"W. T. ELLIS,
"JAS. J. SWEENEY,
"Attorneys for Plaintiffs in Error.

"Filed September 29, 1914.
"J. P. Hobson,
"Chief Justice, Kentucky Court of Appeals.

"Filed September 29, 1914.
"Robt. L. Greene, C. C. A." (Record pp. 182-3).

ARGUMENT.

The admiralty jurisdiction, as often stated by this Court *"is not a matter of obvious principle, or of very accurate history."* The Blackheath, 195 U. S., 365.

In Atlantic Transport Co. vs. Imbroveck, 234 U. S., 61, the court says:

> "As this court has observed, *the precise scope of admiralty jurisdiction is not a matter of obvious principle, or of very accurate history."*

A TEST OF ADMIRALTY JURISDICTION.

While your Honors have said and repeated, that the jurisdiction of this court in admiralty is not *"of obvious principle, or of very accurate history,"* still you have, as I think, very accurately defined the admiralty jurisdiction of this court, both in cases of tort and contract.

I do not believe even an *inland lawyer* ought to be left in very much doubt, as to the admiralty jurisdiction of federal courts in view of the Constitutional provisions and this court's decisions. This court has stated the grounds of admiralty jurisdiction very clearly, and upon its decisions defining that jurisdiction, I rely with much confidence, that federal courts have exclusive jurisdiction of the subject matter involved in this suit.

In Atlantic Transport Co. vs. Imbroveck, 234 U. S., the court says:

> *"The appropriate basis, it is said, of all admiralty jurisdiction, whether in contract or in tort, is the maritime nature of the transaction or event."*

THIS IS A SUIT ON A CONTRACT.

What was the nature of the transaction here? It was that defendant in error, under a contract, would *repair and remodel* a steamboat, the "R. D. Kendall," then engaged in commerce on the Ohio river, into an excursion steamboat, for a certain sum of money. That excursion boat, as the contract shows, was to be

navigated on the Ohio river, a navigable stream. The precise terms and nature of the contract appear in the written agreement between the parties. Appendix to Brief of Defendant in Error, pp. 124-125, and Supra.

Plaintiffs in error delivered the steamboat, which was then engaged in commerce on the navigable waters of the United States, to defendant in error to be *repaired and remodeled*. Defendant in error received the boat at a foreign port; there to execute and carry out the terms of the contract between the parties.

What did defendant in error contract to do? It proposed to remodel a steamboat then engaged in commerce; to fit it for use as an excursion boat on the waters of the Ohio river, a navigable stream. If this contract to repair and remodel the "R. D. Kendall," and to convert it into an excursion boat was not a maritime contract; if it was not to aid the boat in carrying on and conducting commerce, it would, I think, be difficult to define the nature and character of the transaction.

Every line, sentence and clause, the contract relates to the navigation of a steamboat engaged in commerce and thereafter to be so engaged on the navigable waters of the United States. If this is not a maritime contract, it would be interesting to know what it takes to constitute a maritime contract.

The entire subject matter of the contract relates to the navigation of the boat; the repairs to be made upon it were to aid it in its navigation, and how it is possible it can be said a contract like that is not "in the nature of a maritime contract," I admit, I do not know.

"The jurisdiction of courts of admiralty, in matters of contract, depends upon the nature and character of the contract; but in torts, it depends entirely on locality." The Philadelphia, &c., vs. Towboat Co., 23 Howard, 209; Atlantic Transport Co. vs. Imbroveck, 234 U. S., 59.

FURTHER TO SHOW THE STATE COURTS HAD NO JURISDICTION.

John P. Hawkins had a claim for repairs upon a schooner, which belonged to Daniel H. Terrell, in the sum of $869.46. He commenced his action in the Supreme Court of the State of New York, making Terrell, the owner, a party defendant. He claimed in his petition, he was a shipwright engaged in the building and repairing of vessels at City Island, New York; that Terrell, the owner of the schooner, employed him to make certain alterations and repairs upon the schooner; he asserted a lien upon the schooner and after certain proceedings were had in the state court a judgment (as in this case) decreeing a sale of the schooner was rendered.

Under a statute of the State of New York a lien is given in favor of mechanics and other workmen upon *"chattel property."* The schooner was sold under the judgment of the Supreme Court of New York; the lien given by the statute was enforced, and Hawkins became the purchaser.

A little later the town of Pelham, libeled the same schooner for wharfage fees held against it; the boat was seized by the marshal upon process and both Hawkins, the purchaser, and Terrell, the original owner of the schooner, intervened and claimed

the boat; Hawkins claimed it as purchaser under the judgment rendered in the state court and Terrell claimed it as owner.

The only question arising in the Federal Court was as to whether or not *the state court had jurisdiction,* or authority to render a judgment selling the schooner.

The purchaser, Hawkins, insisted the state court had jurisdiction, which was denied by the libelant, the town of Pelham.

The district court in its opinion says:

> "It is conceded that the contract set forth in the complaint in that action (Hawkins' action to sell the boat in the state court) being a contract for the repairs of a domestic vessel, *is a maritime contract.* This has been held alike by the courts of New York and Federal courts." Brookman vs. Hamill, 34 N. Y. 554; "The General Smith" 4 Wheat., 436.

The district court further discussing the question of lien and the state court's jurisdiction says:

> "The fact that the work consisted of alterations, as well as repairs cannot make it the less a maritime contract; and the averment in the complaint that the vessel was *new,* must be taken as qualified by the other averment that before that it was already a vessel which was *altered and repaired.* This averment cannot make the contract one for building a vessel, which would not be maritime, although the vessel may be called in one sense new or rebuilt, as the result of the alterations and repairs, and I understand that it is not claimed that the contract was not maritime."

Again the court says:

"That a suit to enforce a maritime contract is within the admiralty and maritime jurisdiction of the district courts of the United States is also unquestionable; and that jurisdiction is exclusive, except so far as by the statute of the United States the jurisdiction is reserved to the state courts."

Discussing the provision of the Federal statute, which says "saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it," the court says:

"I think it entirely clear that the remedy was not a common law remedy, nor one which the common law, so understood, was competent to give. It is too clear for argument that the action *is not a common law action*, either in its form or effect, or in the nature of the judgment. It is more in the nature, both in its form and in the character of the remedy given, of a bill in equity to *foreclose a mortgage*. The reservation in the act of Congress relates to well known forms of actions and remedies, distinguished alike from those prosecuted *in rem* in courts of admiralty, and from those that are peculiar to courts of equity, equitable remedies and those which it was competent for equity to give, are not saved where the suit is brought for the enforcement of a maritime contract. *It is no answer to say that the proceeding is not strictly in rem, because it affects only the right or title of certain defendants against whom the suit is brought.* That which is saved to the suitor is in all forms of actions, and all remedies other than actions and remedies strictly *in rem*, by only common law remedies. It is no answer to say that the lien sought to be enforced *is not a maritime lien*, but strictly a common law lien. That does not make the new remedy given by the statute a common law remedy. No lien created by a state law, whether it be by the unwritten and traditional law, which collectively we call the common law, or by express statute, is a

maritime lien. Maritime liens are created and exist only by force of the maritime law.

"Thus the lien given by statute to a material man against a vessel is not a maritime lien. Yet a court of admiralty may, unless restrained by statute or rule, when its jurisdiction is invoked to enforce a maritime contract, give full force and effect to a lien which, by the local law, has been made attendant upon, and a security *for the marine contract.* Nor would there seem to be any difference in the power of the admiralty court to give effect to such lien or security, wherein its terms it is a lien on the vessel, analogous to a maritime lien, or a lien or security upon the right, title and interest of the particular owner of the vessel. I see no reason why any admiralty court should not give effect to such a lien as to common law liens, *as well as to a lien created by a state statute.* In clothing the courts of the United States with jurisdiction of maritime contracts it cannot have been intended to leave the suitor without complete enforcement of his rights under the contract in those courts whatever those rights may be. * * * A lien is not a collateral contract; it is a right in, or claim against, some interest in the subject of the contract, created by the law as an incident of the contract itself. The proceedings to sell the vessel in the state court was in form and substance, an action on the contract, and the remedy or relief given in that action *was one unknown to the common law.*

"Whatever rights the lien gave the lienor in the common law he can enforce. Thus he can retain possession until the debt is paid (as plaintiffs in error in this case did). He may reach the title of the owner, perhaps by an attachment or execution. These are common law remedies; and if the common law gave him any other remedy, he is at liberty to pursue it. But no authority is cited for the proposition that the remedy given by this statute, by action and sale under the judgment is one that was ever opened to the lienor at the common law."

The district court in the final paragraph of its decision holds as follows:

> "For these reasons I am of opinion that the state court *had no jurisdiction in the action brought therein to direct a sale of the vessel under its decree for the purpose of enforcing plaintiff's lien.*" Town of Pelham vs. The Schooner B. F. Woolsey, &c., 3 Fed. Rep. 457.

The case from which I have quoted was appealed to the Circuit Court for the Southern District of New York. *Judge Blatchford,* an associate justice of this Court, delivered the opinion.

He reviewed with much particularity the opinion of the district judge, wherein he held the state court, although the state statute gave a lien on the vessel, had no jurisdiction to enforce such lien, or to decree a sale of the vessel. Terrell vs. The Schooner B. F. Woolsey, 4 Fed. Rep. 552.

The Circuit Court in its opinion, discussing what constitutes a maritime contract, says:

> "It is very clear that the contract for the alteration and repairing of the vessel, set up in the complaint in the suit in the state court, as the foundation of that suit, was a maritime contract, and that any suit thereon *must be a civil cause of maritime jurisdiction.*"

The United States Circuit Court quotes with approval Brookman vs. Hamill, 43 New York, construing the Federal Statute giving jurisdiction to district courts of all maritime contracts as follows:

> "This act (the Federal Statute) absolutely divests the state tribunals of jurisdiction to enforce maritime contracts, subject only to the proviso which saves to suitors the right in such cases to pursue in the state courts, such common law remedies as the common law is competent to give. It is impossible to escape the conclusion that any state law which attempts to provide for the enforcement of a maritime claim or contract, by any but a common law remedy infringes upon the exclusive jurisdiction of the Federal courts over that class of cases." This was a suit in equity.

Discussing the New York Statute the circuit judge says:

> "The state statute is one to enforce a lien on property, it does not in terms provide for a suit against any individual, *but merely for an action for the enforcement and foreclosure of the lien.*"

This is precisely what section 2480 of Kentucky statute does; that section gives a lien, and says *it may be enforced by attachment.*

> "The proceeding is essentially one to enforce and foreclose the lien on the chattel. The chattel is indeed, not seized by process in the suit in the first instance and held in custody until sale. *But the suit is essentially one to sell the res.*"

The steamboat in this case was seized under the attachment and the proceedings were against it, and the judgment decreed its sale.

Further discussing the nature of the proceeding in the state court under the New York statute, the United States Circuit Court said:

"This is a common law remedy. The suit is not one in which the chattel is attached as the property of the defendant in the suit. The decree or judgment is like that in a suit for the foreclosure of a mortgage on land. The suit is essentially a suit in equity. It was so treated in the state court (it was so treated by the state court in this case). It was tried by the court without a jury. * * * The proceeding authorized by the state statute, and the proceeding actually had, was neither a common law remedy, nor was it a remedy which the common law was ever held to be competent to give."

The court after considering that provision of the judiciary act conferring original jurisdiction on the United States courts, saving to suitors "the right of a common law remedy where the common law is competent to give it" holds that a proceeding to enforce a lien upon a steamboat for repairs, as in this case, is not a common law remedy taking from Federal courts their jurisdiction in cases of admiralty.

The circuit court draws the distinction as follows:

"The distinction between a common law remedy and an equitable remedy and other remedies is thus recognized, and the distinction obtains in the United States statute under consideration. An equitable remedy, such as the one in the present case, is not a common law remedy, or one which the common law was ever considered as competent to give.

"The expressions *common law remedy* and *common law*, as used in the Revised Statutes of the United States, are to be understood in the sense in which those words were written in 1789, when the statute in question was first enacted. It could not have been the intention of Congress, by the expression in that section, to give the suitor all such remedies as might be afterwards enacted by state statutes, for this would have enabled the state to make the jurisdiction of their courts concur-

> rent in all cases by simply providing a statutory remedy for all cases. Thus the exclusive jurisdiction of the Federal Courts would be defeated.
>
> "It results that the decree of the district court was correct, and that a decree must be entered in this court in affirmance thereof, and to the same effect, with the costs of this court to the appellees, against the appellant." Terrell vs. The Schooner B. F. Woolsey, 4 Fed. Rep. 552.

I have noticed these two cases with some particularity because they settle distinctly once and for all, the question involved here: First, that the claim asserted in this case grows out of a maritime contract, and is enforcable only in the district courts of the United States. Second, that the exception in the judiciary act reserving to suitors the right of a common law remedy, where the common law is competent to give it, does not in this class of cases deprive the Federal Courts of their exclusive jurisdiction.

The two cases last cited appear to conclusively demonstrate that the Breckenridge Circuit Court was without jurisdiction, and that it erred to the prejudice of plaintiffs in error in overruling their special demurrer to its jurisdiction.

The case of Knapp, Stout & Co. vs. McCaffrey, 177 U. S. 640, is in harmony with the other cases cited. Mr. Justice Brown, who delivered the opinion, says:

> "That wherever any lien is given by a state statute for a cause of action cognizable in admiralty, either *in rem* or *in personam*, proceedings *in rem* to enforce such lien are within the exclusive jurisdiction of the Admiralty Courts."

It is immaterial whether section 2480 Kentucky Statutes is valid or invalid, the indisputable fact is, that state courts have no juris-

diction to enforce the statute, or to seize or sell a steamboat engaged in commerce, such jurisdiction being exclusively in the Federal courts. (See Kentucky Statutes Brief for Defendant in Error, pp. 8-10).

In the case of The Robert W. Parsons, 191 U. S., the Supreme Court says:

> "Although the Erie Canal is wholly within the state of New York, it connects navigable waters and is a great highway of commerce between ports in different states and foreign countries, and is, therefore, a navigable water of the United States within the legitimate scope of admiralty jurisdiction of the courts of the United States.
>
> "The enforcement of a lien *in rem* for repairs made in a port of the state to which it belongs to a canal boat engaged in traffic on the Erie Canal and the Hudson river is wholly within the jurisdiction of the admiralty courts and such lien cannot be enforced by any proceeding *in rem* in the courts of the state of New York.
>
> *"The contract for making such repairs is a maritime contract and its nature as such is not affected by the fact, that the repairs were made in a dry dock or by the fact—that the canal boat was engaged in traffic wholly within the state of New York."* (Syllabus).

THIS COURT IS THE SOLE JUDGE AS TO WHETHER OR NOT THE QUESTION INVOLVED HERE IS A FEDERAL QUESTION.

I have shown that the question involved on this writ of error is a Federal question; counsel for defendant in error cites Kentucky cases to show it is not a Federal question, but the decisions

of the Kentucky Court of Appeals on this subject are not binding authority on this court. The Kentucky Court of Appeals should follow the decisions of this court in construing United States Statutes, 205 U. S., 360.

In Railway vs. Taylor, 210 U. S., this court says:

> "But the defendant in error insists that the questions themselves, though properly here in form, are not federal questions, that is to say, not questions which we by law are authorized to consider on a writ of error to a state court."

This court in the case cited says:

> "It was settled, once and for all time, in Cohen's vs. Virginia, 6 Wheat., 264, that the appellate jurisdiction, authorized by the Constitution to be exercised by this court, warrants it in reviewing the judgments of state courts *so far as they pass upon a law of the United States.*"

Again the court says:

> "Where a party to litigation in a state court insists, by way of objection to or requests for instructions, upon a construction of a statute of the United States which will lead, or on possible findings of fact from the evidence may lead, to a judgment in his favor, and his claim in this respect, being duly set up (as it was in this case), is denied by the highest court of the state (as it was in this case), then the question thus raised may be reviewed in this court."

I need not, therefore, notice the Kentucky decisions construing United States statutes as to this court's jurisdiction, because, as

already stated, they are not authority, if in conflict with the decisions of this court.

THIS IS A SUIT IN EQUITY.

Defendant in error began its suit at law, but finding it could not proceed with its suit as a common law action, the case was, on its motion, transferred to equity. The common law was not adequate to furnish defendant in error the remedy it sought, nor to enforce its specific attachment, or order a sale of the steamboat. The trial and judgment was without a jury and in equity.

A SPECIFIC ATTACHMENT AGAINST THE BOAT WAS SUED OUT IN THIS CASE.

The proceeding in this case was, in its essence and in fact, a suit against the steamboat to enforce a lien; a specific attachment was sued out and levied on the boat. The proceeding was essentially against the boat. (Brief of Defendant in Error, page 25).

The specific attachment in this case was sued out under section 249, Kentucky Civil Code of Practice, which section is as follows:

> "(Actions in Which Specific Attachments Allowed, and Grounds for). In an action to enforce a mortgage of, or lien upon personal property; or, for the recovery, partition or sale of such property; or, by a plaintiff having a future estate or interest therein for the security of his rights, if it satisfactorily appear, from a verified petition, or from affidavits, or the proofs in the cause, that the plaintiff has a just claim, and that the property is about to be sold, concealed or removed from the State; or, if the plaintiff state on oath that he has

reasonable cause to believe and does believe that, unless prevented by the Court, the property will be sold, concealed or removed from the State, an attachment may be granted against the property."

The Court observes the section of the Kentucky Civil Code above quoted allows a specific attachment, such as was sued out in this case, only in actions to enforce a mortgage, or a lien on personal property, or for the recovery, partition or sale of such property; or by a plaintiff having a future estate or interest therein for the security of his rights, etc.

It is, therefore, obvious that this was a proceeding *in rem* to enforce a lien defendant in error was asserting against the steamboat; the proceeding was essentially against the thing, otherwise there was no ground for the specific attachment. Such a proceeding was necessarily in equity; it was a remedy which the common law is not and never was adequate to give. Defendant in error recognizing it could get no relief at law proceeded in equity.

The boat was seized pursuant to the attachment sued out under the provision of the Code above quoted. It is only in cases where the proceeding *is essentially against the thing itself that such attachments are authorized.*

The suit was, therefore, a proceeding *in rem*, and not in *personam*. But, if the proceeding had been in *personam*, as stated by this Court in Knapp, Stout & Co. vs. McCaffrey, 177 U. S., that would not have changed the situation, because, as said by this Court in that case, the cause of action was cognizable only in admiralty proceedings to enforce such lien.

CASES CITED BY COUNSEL FOR DEFENDANT IN ERROR NOT APPLICABLE TO THE FACTS OF THIS CASE.

An examination of the many cases cited by counsel for defendant in error will show that in each case the suit was to recover the price for *original construction*, and not for repairs of a vessel already in existence and engaged in commerce. I mention only already in existence and engaged in commerce. It follows under the decisions of this court, that cases for original construction of vessels have no application here. I mention only three of the cases cited by counsel for defendant in error to show they do not apply to the facts of this case.

The case of Roach & Long vs. William Chapman, 22 Howard, was a suit for material furnished for building the vessel; that of People's Ferry Co. vs. Beers, 20 Howard, was a suit on a contract for building a ship, and that of The Winnebago, 205 U. S., 355, was a suit for the balance of the contract price for the original construction of the vessel.

The cases cited by opposing counsel are not applicable to the facts of this case.

The contract sued on is a maritime contract; state courts have no jurisdiction to enforce such contracts. The decision of the Kentucky Court of Appeals should be reversed.

Respectfully,

WILLIAM T. ELLIS,

Counsel for Plaintiffs in Error.

A specific attachment in a suit against the owners of a vessel for repairs made thereto, under the lien provisions of §§ 2480–2486, Kentucky statutes, *held* to be an auxiliary lien attachment in a suit *in personam* to protect the judgment and not a proceeding *in rem* and the case was, therefore, within the jurisdiction of the state court.

159 Kentucky, 414, affirmed.

THE facts, which involve the construction and validity of the laws of the State of Kentucky, relating to liens on vessels for repairs and the jurisdiction of the state court to enforce such liens, are stated in the opinion.

Mr. William T. Ellis, for plaintiffs in error, submitted:

Admiralty jurisdiction is not of obvious principle, or very accurate history. *Atl. Trans. Co.* v. *Imbrovek*, 234 U. S. 39; *The Blackheath*, 195 U. S. 365.

This is a suit on a contract and this court has jurisdiction. *The Philadelphia* v. *Towboat Co.*, 23 How. 209; *Atl. Trans. Co.* v. *Imbrovek*, 234 U. S. 59.

The state courts had no jurisdiction. *Brookman* v. *Hamill*, 34 N. Y. 554; *The General Smith*, 4 Wheat. 436; *Pelham* v. *Schooner Woolsey*, 3 Fed. Rep. 457; *Terrell* v. *Schooner Woolsey*, 4 Fed. Rep. 552; Kentucky Statutes, 2480; *Knapp* v. *McCaffrey*, 177 U. S. 640; *The Robert W. Parsons*, 191 U. S. 17.

This court is the sole judge as to whether or not a Federal question is here involved. 205 U. S. 360; *Railway* v. *Taylor*, 210 U. S. 281; *Cohen* v. *Virginia*, 6 Wheat. 264.

This is a suit in equity and proceeding is against the steam-boat. Kentucky Civil Code of Practice, § 249.

The cases cited by counsel for defendant in error are not applicable to the facts of this case. *Roach* v. *Chapman*, 22 How. 129; *People's Ferry Co.* v. *Beers*, 20 How. 393; *The Winnebago*, 205 U. S. 355.

Mr. Claude Mercer, for defendant in error, submitted.

MR. JUSTICE HUGHES delivered the opinion of the court.

The Cloverport Foundry and Machine Company, the defendant in error, brought this suit against F. T. Rounds and S. A. Jesse, of Owensboro, Kentucky, in the Breckinridge Circuit Court of that State, to recover the sum of $5,668.65 for work and materials furnished under a contract to repair and rebuild a steamboat formerly known as the 'R. D. Kendall' and renamed the 'Golden Girl.' The defendants were the owners of the vessel. A specific attachment was issued under §§ 2480 to 2486 of the Kentucky Statutes which provided for a lien upon watercraft for work and supplies, etc., and the defendants procured a release of the boat by executing a forthcoming bond. By special demurrer, the defendants challenged the jurisdiction of the court to entertain the action upon the ground that the subject-matter was exclusively cognizable in the admiralty. The demurrer was overruled, and the defendants, reasserting the absence of authority in the court, answered denying the allegations of the petition and setting up a counter-claim for damages alleged to have been caused by defective work and by delay in completion. Upon the trial, the counter-claim was dismissed and the Company had judgment against the defendants for the amount demanded in its petition; it was further adjudged that, by virtue of the attachment and the applicable law, the plaintiff had a lien upon the vessel for the payment of the judgment and the vessel was ordered to be sold and the proceeds applied to the debt. The Court of Appeals of the State affirmed the judgment. 159 Kentucky, 414.

The question presented on this writ of error relates solely to the jurisdiction of the state court. It is contended by the plaintiff in error that the contract in suit was for repairs on the vessel and therefore was maritime in character; that the proceeding was *in rem* and beyond the

competency of the local tribunal. See *The Moses Taylor*, 4 Wall. 411; *The Hine* v. *Trevor*, 4 Wall. 555; *The Belfast*, 7 Wall. 624; *The J. E. Rumbell*, 148 U. S. 1; *The Glide*, 167 U. S. 606; *The Robert W. Parsons*, 191 U. S. 17; Act of June 23, 1910, c. 373, 36 Stat. 604. On the other hand, the defendant in error denies that the contract was maritime, contending that the old boat was dismantled, its identity destroyed, and a new boat built, and that the case in this aspect falls within the decisions relating to contracts for the original construction of a vessel. *The People's Ferry Co.* v. *Beers*, 20 How. 393; *Roach* v. *Chapman*, 22 How. 129; *Edwards* v. *Elliott*, 21 Wall. 532; *The Winnebago*, 205 U. S. 354. Further, it is urged in support of the judgment that the proceeding was *in personam*, and not *in rem;* that the attachment and direction for sale were incidental to the suit against the owners and for the purpose of securing satisfaction of the personal judgment. Accordingly, it is said, the proceeding was within the scope of the 'common law remedy' saved to suitors by the Judiciary Act. 1 Stat. 77; Rev. Stat., § 563; Judicial Code, § 24.

As the last point is plainly well taken, it is unnecessary to go further. It is well settled that in an action *in personam* the state court has jurisdiction to issue an auxiliary attachment against the vessel; and, whether or not the contract in suit be deemed to be of a maritime nature, it cannot be said that the state court transcended its authority. The proceeding *in rem* which is within the exclusive jurisdiction of admiralty is one essentially against the vessel itself as the debtor or offending thing,—in which the vessel is itself 'seized and impleaded as the defendant, and is judged and sentenced accordingly.' By virtue of dominion over the thing all persons interested in it are deemed to be parties to the suit; the decree binds all the world and under it the property itself passes and not merely the title or interest of a personal defendant.

The Mary, 9 Cranch, 126, 144; *The Moses Taylor, supra; The Hine* v. *Trevor, supra; The Belfast, supra; The Glide, supra; The Robert W. Parsons, supra; The Josephine*, 39 N. Y. 19, 27. Actions *in personam* with a concurrent attachment to afford security for the payment of a personal judgment are in a different category. *The Belfast, supra; Taylor* v. *Carryl*, 20 How. 583, 598, 599; *The Robert W. Parsons, supra.* And this is so not only in the case of an attachment against the property of the defendant generally, but also where it runs specifically against the vessel under a state statute providing for a lien, if it be found that the attachment was auxiliary to the remedy *in personam. Leon* v. *Galceran*, 11 Wall. 185; see also *Johnson* v. *Chicago &c. Elevator Co.*, 119 U. S. 388, 398, 399; *Knapp, Stout & Co.* v. *McCaffrey*, 177 U. S. 638, 646, 648.

In the case of *Leon* v. *Galceran, supra*, the suit was *in personam*, in a court of the State of Louisiana, to recover mariner's wages. Under a statute of the State the vessel was subject to a lien or privilege in favor of the mariner; and accordingly at the beginning of the suit, on the application of the plaintiff who asserted his lien, a writ of sequestration was issued and levied upon the vessel which was afterwards released upon the execution by the owner, the defendant in the suit, of a forthcoming bond, with surety. Judgment was recovered by the plaintiff for the amount claimed, and the vessel not being returned, suit was brought in the state court against the surety. Upon writ of error from this court to review the judgment in the latter action, it was contended, with respect to the issue and levy of the writ of sequestration, that the vessel had been seized under admiralty process in a proceeding *in rem* over which the state court had no jurisdiction *ratione materiæ* and hence that the bond was void. The contention was overruled and the jurisdiction of the state court maintained. As this court said in *Johnson* v. *Chicago &c. Elevator Co., supra*, in reviewing *Leon* v. *Galceran, supra,*

it was held that 'the action *in personam* in the state court was a proper one, because it was a common law remedy, which the common law was competent to give, although the state law gave a lien on the vessel in the case, similar to a lien under the maritime law, and it was made enforceable by a writ of sequestration in advance, to hold the vessel as a security to respond to a judgment, if recovered against her owner, as a defendant; that the suit was not a proceeding *in rem*, nor was the writ of sequestration; that the bond given on the release of the vessel became the substitute for her; that the common law is as competent as the admiralty to give a remedy in all cases where the suit is *in personam* against the owner of the property; and that these views were not inconsistent with any expressed in *The Moses Taylor*, in *The Hine* v. *Trevor*, or in *The Belfast*.'

The result of the decisions is thus stated in *Knapp, Stout & Co.* v. *McCaffrey*, 177 U. S. 638, 646, 648. 'The true distinction between such proceedings as are and such as are not invasions of the exclusive admiralty jurisdiction is this: If the cause of action be one cognizable in admiralty, *and* the suit be *in rem* against the thing itself, though a monition be also issued to the owner, the proceeding is essentially one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction, *or* if the suit be *in personam* against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the saving clause of the statute (§ 563) of a common law remedy.'

In the present case, as we have said, the suit was *in personam* and the attachment was in that suit. It had no other effect than to provide security for the payment of the personal judgment which was recovered, and it was

for the purpose of satisfying this judgment that, in the same proceeding and by the terms of the judgment, the vessel was directed to be sold. It was within the scope of the common law remedy to sell the property of the judgment debtors to pay their debt. We are not able to find any encroachment upon the exclusive jurisdiction vested in the Federal court in admiralty.

Judgment affirmed.

ROUNDS *v.* CLOVERPORT FOUNDRY AND MACHINE COMPANY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 669. Submitted February 23, 1915.—Decided April 19, 1915.

In an action *in personam* the state court has jurisdiction to issue an auxiliary attachment against the vessel whether or not the contract be of a maritime nature.

While a proceeding *in rem*, as one essentially against the vessel itself, is within the exclusive jurisdiction of the admiralty, an action *in personam* with concurrent remedy of attachment to secure payment of a personal judgment is within the jurisdiction of the state court even though such attachment, if auxiliary to the remedy *in personam*, runs specifically against the vessel under a state statute providing for a lien.